

HEALTH PLANNING AMENDMENTS OF 1985

JANUARY 23, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3010]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3010) to amend the Public Health Service Act to revise and extend the health planning authority under that Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment.....	1
Purpose and Summary.....	2
Background and Need for Legislation	2
Hearings	2
Committee Consideration	2
Committee Oversight Findings.....	2
Committee on Government Operations	3
Committee Cost Estimate.....	3
Congressional Budget Office Estimate	3
Inflationary Impact Statement	4
Section-by-Section Analysis and Discussion.....	4
Agency Views.....	7
Changes in Existing Law Made by the Bill, as Reported.....	7

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 9, insert after line 20 the following:

SEC. 12. REPEAL.

Effective October 1, 1986, title XV of the Public Health Service Act is repealed.

PURPOSE AND SUMMARY

H.R. 3010 provides for a one-year extension of authorizations for the health planning program with new flexibility for States in administering their Certificate of Need programs. Authorizations for FY 1986 are frozen at the FY 1985 appropriations level (\$64.9 million). State participation would be voluntary, while under current law states are required to participate or face a penalty if they do not. States could determine whether to have local planning agencies, and if so, the role the agencies would play in certificate of need review. Thresholds for certificate of need review would be raised for capital expenditures from \$600,000 to \$1 million, for the annual operating cost of new institutional health services from \$250,000 to \$500,000, and for major medical equipment from \$400,000 to \$500,000.

Local planning agencies would no longer be required to count representatives of health insurance companies as "providers" on their board of directors. Representatives of health insurance companies could be "consumers".

The health planning program and law are terminated effective October 1, 1986.

BACKGROUND AND NEED FOR THE LEGISLATION

The authorizations of appropriations in the Health Planning law, Title 15 of the Public Health Service Act, expired at the end of Fiscal Year 1982. Appropriations for each subsequent fiscal year have been made under the provisions of the Continuing Resolution for each year. The Committee's bill would provide authorizations for Fiscal Year 1986.

HEARINGS

The Committee's Subcommittee on Health and the Environment held one day of hearings on the reauthorization of the health planning program on May 3, 1985 (Serial No. 99-30).

COMMITTEE CONSIDERATION

H.R. 3010 was introduced by Mr. Waxman on July 16, 1985. On October 1, 1985, the Subcommittee on Health and the Environment met in open session and ordered reported the bill H.R. 3010 without amendment by a vote of 11-2, a quorum being present. On November 5, 1985, the Committee met in open session and ordered reported the bill H.R. 3010 with amendment by a vote of 22-2, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee held oversight hearings and made findings that are reflected in the legislative report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representative, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 3010 is \$28.1 million. Because health planning activities have been forward funded, only \$28.1 million is required to be appropriated in FY 86 to provide total annual funding of \$64.9 million. \$28.1 million is the amount of funding included in the Labor-HHS appropriation bill signed into law in December, 1985. It is the Committee's intention that no additional funding be appropriated for health planning activities in FY 1986.

The CBO cost estimate was based on its standard spend out rates. Under the Committee's bill, no funds could be spent in Fiscal Year 1987 or beyond.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 6, 1985.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3010, the Health Planning Amendments of 1985, as ordered reported by the House Committee on Energy and Commerce on November 4, 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3010.
2. Bill title: Health Planning Amendments of 1985.
3. Bill status: As ordered reported by the House Committee on Energy and Commerce on November 4, 1985.
4. Bill purpose: To amend the Public Health Service Act to revise and extend the health planning authority under that Act.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Authorization level:					
Health systems agencies.....				42.0	
State health planning and Development.....				21.4	

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Baltimore, Maryland 21244

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Centers for health planning.....	1.5				
Total, authorization level	64.9				
Estimated outlays:					
Health systems agencies.....	23.7	12.9	4.1	1.3	
State health planning and development	12.1	6.6	2.1	.6	
Centers for health planning.....	.8	.5	.1	.1	
Total, estimated outlays	36.6	20.0	6.3	2.0	

Basis of estimate: All authorization levels are stated in the bill. We assume authorization amounts are fully appropriated at the beginning of each fiscal year. Outlays are estimated using spendout rates computed by CBO on the basis of recent program data.

This bill would reauthorize the health planning programs for fiscal year 1986. In addition, the bill would repeal the sanctions levied on states not participating in state planning. States are given the option to set up certificate of need (CON) system in which the state health planning agencies regulate the extent and manner in which local health planning agencies participate. The bill would also raise CON thresholds in fiscal year 1986. All health planning programs under Title XV of the Public Health Service Act would be repealed in fiscal year 1987.

6. Estimated cost to State and local government: The grants to state planning agencies may not exceed 75 percent of the agencies operating costs. At least 25 percent of agency funding must come from non-federal sources which could be provided by state and local governments. If the \$21.4 million authorized in this bill for state planning grants are fully appropriated and allocated, at least \$7.1 million in non-federal funds would have to be provided.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Carmela Dyer.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill:

The Committee is unaware of any inflationary impact that H.R. 3010, if enacted, would have on the economy.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE, REFERENCE TO ACT

The section provides that the short title of the bill is the "Health Planning Amendments of 1985," and specifies that the provisions of the bill amend the Public Health Service Act.

SECTION 2. HEALTH SYSTEMS AGENCIES (HSA'S): REDUCED STAFFING REQUIREMENTS

The section amends section 1512(b)(2)(A) and (B) to reduce the number of staff which an HSA is required to have from the lesser of five overall or one per hundred thousand residents of the area to the lesser of three overall or one per three hundred thousand residents of the area. This change in minimum staffing requirements is necessary because of the recent reductions in HSA grants.

SECTION 3. CERTIFICATE OF NEED (CON) REVIEW

The section amends sections 1513(f) and 1523(a)(4) to provide that HSAs shall review and make recommendations concerning certificate-of-need applications in the manner, and to the extent, provided for by State Agencies. Such State CON systems shall provide that all applications of the same or similar type must be reviewed in the same manner. This provision will allow the State planning agency to determine the role of HSAs in the State's certificate-of-need program

SECTION 4. DESIGNATION OF HEALTH SYSTEMS AGENCIES

This section amends section 1515 regarding the designation of Health Systems Agencies. Section 4(a) of the bill amends paragraph (b)(2) to remove the 36 month limit on the period during the HSAs may be conditionally designated. Under the bill, the Secretary of Health and Human Services has discretion to determine the length of a conditional designation period. This section of the bill also revises paragraph (b)(3) and subparagraph (c)(1)(B) regarding the termination as are currently required for the termination of fully designated agencies.

Section 4(b) of the bill amends subparagraph (c)(3)(B) to remove the 12 month limit on the period during which HSAs which have previously been fully designated may be conditionally designated. The Secretary of Health and Human Services is allowed to determine the length of the conditional designation period.

Section 4(c) of the bill amends subsection (d) to permit the same entity to be redesignated as an HSA. Current law only allows the designation of another entity.

SECTION 5. PLANNING GRANTS; REQUIRED AMOUNTS

This section amends section 1516 by deleting paragraph (c)(2) which permits the Secretary to reduce the funds provided to HSAs. The Secretary would be required to award funds in accordance with the formula contained in section 1516.

SECTION 6. DESIGNATION OF STATE AGENCIES: EXTENDED CONDITIONAL PERIOD

This section amends section 1521 with regard to the designation of State Health Planning and Development Agencies. Section 6(a) of the bill deletes the provisions of subparagraph (b)(2)(B) which limit the period during which a State agency may be conditionally designated. The Secretary would determine the length of the condi-

tional designation period. This section of the bill also revises subparagraphs (2)(C) and (3)(B) of subsection (b) regarding the termination of conditionally designated State agencies to require the same procedures as are currently required for termination of fully designated agencies.

Section 6(b) of the bill amends subparagraph (b)(4)(B) to remove the 12 month limit on the period during which State agencies which have previously been fully designated may be conditionally designated. The Secretary is allowed to determine the length of the conditional designation period.

Section 6(c) of the bill deletes subsection (d). That subsection required States to have a fully designated State agency by the specified time or be subject to the loss of certain Public Health Service Act funds.

SECTION 7. STATE AGENCY FUNCTIONS: LIMITS ON THE APPROPRIATENESS REVIEWS

This section amends section 1526(a)(6) to require that State agencies review the appropriateness of currently offered institutional health services only to the extent such review is feasible.

SECTION 8. DEFINITIONS: PROVIDERS, THRESHOLDS FOR C.O.N. REVIEW

Section 8(a) of the bill amends a definition of "provider of health care" in section 1531 to remove health insurance companies. The effect is to allow HSAs to count the representatives of such companies as consumers on their boards of directors.

Sections 8(b)-(d) of the bill amend section 1531 to increase the threshold above which projects must be reviewed by State certificate-of-need programs. The threshold for capital expenditures is increased to \$1,000,000 from \$600,000; the threshold for the annual operating cost of institutional health services is increased to \$500,000 from \$250,000; and the threshold for major medical equipment expenditures is increased to \$500,000 from \$400,000.

SECTION 9. STATES WITHOUT HSAs: PROCEDURES FOR RE-ESTABLISHMENT

The section amends section 1536 to allow States which have previously elected to operate health planning systems under section 1536 (which terminated all HSAs in the State) to expedite the reestablishment of HSAs and to require the Secretary to designate HSAs in such areas. This section of the bill also amends section 935 of Public Law 97-35 to allow HSA funds to continue to be provided to States which operated section 1536 programs in 1981.

SECTION 10. AUTHORIZATIONS: ONE YEAR FREEZE

This section authorizes appropriations for Fiscal Year 1986 only. It includes \$42,000,000 for grants to HSAs; \$21,400,000 for grants to States; and \$1,500,000 for grants and contracts for Centers for Health Planning.

SECTION 11. EFFECTIVE DATE

The effective date of these amendments is October 1, 1985.

SECTION 12. REPEAL

This section establishes October 1, 1986 as the date when Title 15 of the Public Health Service act is repealed.

AGENCY VIEWS

Agency comments were submitted during the May 3, 1985, hearing of the Subcommittee on Health and the Environment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC HEALTH SERVICE ACT

* * * * *

TITLE IV—NATIONAL HEALTH PLANNING AND DEVELOPMENT

* * * * *

PART B—HEALTH SYSTEMS AGENCIES

* * * * *

HEALTH SYSTEMS AGENCIES

SEC. 1512. (a) * * *

(b)(1) LEGAL STRUCTURE.—* * *

(2) STAFF.—

(A) EXPERTISE.—A health systems agency shall, *to the extent practicable*, have a staff which provides the agency with expertise in [at least] the following: (i) Administration, (ii) the gathering and analysis of data, (iii) health planning, (iv) development and use of health (including mental health) resources, (v) financial and economic analysis, and (vi) prevention of disease and other public health matters. The functions of planning and of development of health (including mental health) resources shall be conducted by staffs with skills appropriate to each function. At least one member of the staff shall be designated to have the responsibility of providing the members of the governing body of an agency (particularly the consumer members) with such information and technical assistance as they may require to effectively perform their functions.

(B) SIZE AND EMPLOYMENT.—The size of the professional staff of any health systems agency shall be not less than [five,] *three*, except that if the quotient of the population (rounded to the [next highest one] *nearest three* hundred thousand) of the health service area which the agency serves divided by [one] *three* hundred thousand is greater than [five] *three* the minimum size of the professional staff shall be the lesser of (i) such quotient, or (ii) twenty-five. The members of the staff shall be

selected, paid, promoted, and discharged in accordance with such system as the agency may establish, except that the rate of pay for any position shall not be less than the rate of pay prevailing in the health service area for similar positions in other public or private health service entities. If necessary for the performance of its functions, a health systems agency may employ consultants and may contract with individuals and entities for the provision of services. Compensation for consultants and for contracted services shall be established in accordance with standards established by regulation by the Secretary.

* * * * *

FUNCTION OF HEALTH SYSTEMS AGENCIES

SEC. 1513. (a) * * *

* * * * *

[(f) To] (f)(1) *Except as provided in paragraph (2), to assist State health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a) each health systems agency shall review and make recommendations to the appropriate State health planning and development agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency.*

(2) *If a State health planning and development agency for a State establishes a system under section 1523(a)(4) for review by health systems agencies of applications for certificates of need, each health systems agency in such State shall make such review only to the extent authorized by and in accordance with such system.*

* * * * *

DESIGNATION OF HEALTH SYSTEMS AGENCIES

SEC. 1515. (a) * * *

(b)(1) * * *

(2) During any period of conditional designation [(which, except as otherwise provided in this paragraph, may not exceed 24 months),] the secretary may require that the entity conditionally designated meet only such of the requirements of section 1512(b) and perform only such of the functions prescribed by section 1513 as he determines such entity to be capable of meeting and performing. [The Secretary may, upon application of a conditionally designated entity, extend for an additional period of not to exceed 12 months the period of such entity's conditional designation if the Secretary determines that (A) unusual circumstances exist or existed which prevent such entity from qualifying for designation under subsection (c) within 24 months of such entity's conditional designation under this subsection, (B) such extension should enable such entity to qualify for designation under subsection (c), and (C) such extension is necessary to carry out the purposes of this title. Each such determination shall be in writing and shall include a summary of the reasons for it. The number and type of such requirements

and functions shall, during the period of conditional designation, be progressively increased as the entity conditionally designated becomes capable of added responsibility so that, by the end of such period, the agency may be considered for designation under subsection (c).】

(3) Any agreement under which any entity is conditionally designated as a health systems agency may be terminated by such entity upon ninety days notice to the Secretary or by the Secretary upon ninety days notice to such entity *if the Secretary determines, in accordance with subsection (c)(1)(B), that the entity is not complying with the provisions of such agreement.*

* * * * *

(c)(1)(A) * * *

(b) Before the Secretary may terminate, under [subparagraph (a)(ii), an agreement with an entity for designation] *subsection (b)(3) or subparagraph (A)(ii) of this paragraph, an agreement with an entity for conditional designation or designation* as the health systems agency for a health service area, the Secretary shall—

(i) consult with the Governor and the Statewide Health Coordinating Council of each State in which is located the health service area respecting the proposed termination,

(ii) give the entity notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the entity is not in compliance with the agreement, and (II) the actions that the entity should take to come into compliance with the agreement, and

(iii) provide the entity with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement *under subsection (b) or this subsection* to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the entity with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the entity an opportunity for a hearing on the matter specified in the notice.

* * * * *

(3)(A) * * *

(B) If upon a review under section 1535 of the agency's operation and performance of its functions the Secretary determines that it has not fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 1513 during the period of the agreement to be renewed or does not continue to meet the requirements of section 1512(b), he may terminate such agreement or return such agency to a conditionally designated status under subsection (b) [for a period not exceed twelve months]. [At the end

of such period, the Secretary shall either terminate the agreement with such agency or enter into an agreement with such agency under paragraph (1).] The Secretary may not terminate an agreement or return an agency to a conditionally designated status unless the Secretary has—

(i) provided the agency with notice of his intent to return it to a conditional status or terminate the agreement with the agency and included in that notice specification of any functions which the Secretary has determined the agency did not satisfactorily fulfill and of any requirements which the Secretary has determined the agency has not met;

(ii) provided the agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

(iii) in the case of a proposed termination of an agreement, consulted with the National Council on Health Planning and Development respecting the termination.

* * * * *

(d) If a designation agreement under subsection (b) or (c) of a health systems agency for a health service area is terminated before the date prescribed for its expiration or is not renewed, the Secretary shall, upon application and in accordance with subsection (b) or (c) (as the Secretary determines appropriate), enter into a designation agreement with [another] an entity to be the health systems agency for such area.

PLANNING GRANTS

SEC. 1516. (a) * * *

* * * * *

[(c)(1) Except as provided in paragraph (2), the] (c) *The* amount of a grant under subsection (a) to a health systems agency designated under section 1515(c) shall be the greater of the amount determined under [subparagraph (A), (B), (C)] *paragraph (1), (2), or (3)* as follows:

[(A)] (1) The amount of a grant to a health systems agency shall be the lesser of—

[(i)] (A) the product of \$0.60 and the population of the health service area for which the agency is designated, or

[(ii)] (B) \$3,750,000.

[(B)(i)] (2)(A) If the application of the health systems agency for such grant states that the agency, in its latest fiscal year ending before the period in which such grant will be available for obligation, collected non-Federal funds meeting the requirements of [clause (ii)] *subparagraph (B)* for the purposes for which such grant may be made, the amount of such grant shall be the sum of—

[(I)] (i) the amount determined under subparagraph (A) or (C), whichever is applicable, and

[(II)] (ii) the lesser of the amount of such non-Federal funds or \$200,000 or the product of \$0.25 and the popula-

tion of the health service area for which the agency is designated, whichever is greater.

[(ii)] (B) The non-federal funds which an agency may use for the purpose of obtaining a grant under subsection (a) which is computed on the basis of the formula prescribed by [clause (i)] *subparagraph (A)* shall be funds which are not paid to the agency for the performance of particular services by it and which are otherwise contributed to the agency without conditions as to their use other than the condition that the funds shall be used for the purposes for which a grant made under this section may be used.

[(C)] (3) The amount of a grant to a health systems agency may not be less than—

[(i)] (A) in the case of a grant made in the fiscal year ending September 30, 1979, \$175,000 and, to the extent appropriations are specifically made after October 1, 1979, to provide the additional amount authorized by this clause, an amount which bears the same ratio to \$50,000 as the number of days beginning in the period beginning on October 1, 1979, and ending on the date of the period for which the grant was made bears to 365,

[(ii)] (B) \$225,000 in the case of a grant made in the fiscal year ending September 30, 1980,

[(iii)] (C) \$245,000 in the case of a grant made in the fiscal year ending September 30, 1981, and

[(iv)] (D) \$100,000 in the case of a grant made in any succeeding fiscal year.

[(2)] If the Secretary determines, after review of the budget of a health systems agency and after consultation with the State health planning and development agency of the State in which such agency is located, that the amount of a grant which is to be made to the agency in accordance with paragraph (1) is in excess of the amount needed by the agency to adequately perform its functions under its designation agreement, the amount of the grant to the agency shall be such amount as the Secretary determines the agency needs for the performance of such functions.]

(d)(1) For the purpose of making payments pursuant to grants made under subsection (a), there are authorized to be appropriated \$60,000,000 for the fiscal year ending June 30, 1975, \$90,000,000 for the fiscal year ending June 30, 1976, \$125,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, \$150,000,000 for the fiscal year ending September 30, 1980, and \$165,000,000 for the fiscal year ending September 30, 1981.

(2) Of the amount appropriated under paragraph (1) for any fiscal year, the Secretary may use not more than 5 per centum of such amount to increase the amount of grants in such fiscal year to health systems agencies under subsection (a) to assist the agencies in meeting extraordinary expenses (including extraordinary expenses resulting from an agency's health service area being located in more than one State or from an agency serving a large rural or urban medically underserved population or a geographically large health service area) which would not be covered under the amount of a grant that would be available to an agency under subsection (c) and in improving their performance as a result of the develop-

ment and implementation of innovative health planning techniques.

(3) Notwithstanding subsection [(c)(1),] (c), if the total of the amounts appropriated under paragraph (1) for any fiscal year (reduced by the amount to be retained by the Secretary for use under paragraph (2)) is less than the amount required to make grants to each health systems agency designated under section 1515(c) in the amount prescribed for such agency by subsection [(c)(1),] (c), the Secretary shall make a pro rata reduction in the amount of the grant to each such agency as follows:

(A) The Secretary shall compute the amount of the grant each such agency would be entitled to receive under such subsection if the dollar limit prescribed by [subparagraph (A)(ii)] *paragraph (1)(B)* of such subsection did not apply.

(B) The Secretary shall reduce on a pro rata basis the amount of the grant to each such agency computed under subparagraph (A) of this paragraph so that the total amount of such grants equals the total of the amounts appropriated for such fiscal year (as so reduced), except that—

(i) the amount of the grant to any such agency may not exceed \$3,750,000,

(ii) to the extent of available appropriations, no such agency shall receive a grant in an amount less than the amount prescribed by [subparagraph (C)] *paragraph (3)* of subsection [(c)(1)] (c) for such fiscal year, and

(iii) if the total of the appropriations for the fiscal year ending September 30, 1982, for such grants—

(I) is equal to or greater than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount less than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has decreased, unless the level of non-Federal funds on which its grant is computed had decreased, or unless the amount available for its grant is decreased because of an increase in the minimum grant prescribed by subsection [(c)(1)(C),] (c)(3), or

(II) is less than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount greater than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has increased, unless the level of non-Federal funds on which its grant is computed has increased, or unless the amount of its grant is increased under subsection [(c)(1)(C).] (c)(3).

PART C—STATE HEALTH PLANNING AND DEVELOPMENT

DESIGNATION OF STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

SEC. 1521. (a) * * *

(b)(1) * * *

(2)(A) * * *

[(B) The period of an agreement described in subparagraph (A) shall not extend beyond the period set forth in subsection (d)(1)(3). During such period the Secretary may require that the designated State Agency perform only such of the functions of a State Agency prescribed by section 1523 as he determines it is capable of performing. The number and type of such functions shall, during such period, be progressively increased as the designated State Agency becomes capable of added responsibility, so that by the end of such period the designated State Agency may be considered for designation under paragraph (3).]

[(C)] (B) Any agreement with a Governor of a State entered into under subparagraph (A) may be terminated by the Governor upon ninety days' notice to the Secretary or by the Secretary upon ninety days' notice to the Governor *if the Secretary determines, in accordance with paragraph (3)(B), that the State Agency is not complying with the provisions of such agreement.*

(3)(A) * * *

(B) Before the Secretary may terminate an agreement with a designated State Agency under [subparagraph (A)(ii),] *subparagraph (2)(C) or subparagraph (A)(ii) of this paragraph,* the Secretary shall—

(i) consult with the Statewide Health Coordinating Council of the State for which the State Agency is designated respecting the proposed termination,

(ii) give the State Agency notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the State Agency is not in compliance with the agreement, and (II) the actions that the State Agency should take to come into compliance with the agreement, and

(iii) provide the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement *under paragraph (2) or this paragraph* to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the State Agency with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the State Agency an opportunity for a hearing on the matter specified in the notice.

(4)(A) * * *

(B) If upon a review under section 1535 of the State Agency's operation and performance of its functions, the Secretary determines that it has not fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed or if the applicable State administrative program does not continue to meet the requirements of section 1522, he may terminate such agreement or return the State Agency to a conditionally

designated status under paragraph (2) of subsection (b) [for a period not to exceed twelve months.]. [At the end of such period, the Secretary shall either terminate its agreement with such State Agency or enter into an agreement with such State Agency under paragraph (3) of subsection (b).] The Secretary may not terminate an agreement or return a State Agency to a conditionally designated status unless the Secretary has—

(i) provided the State Agency with notice of his intent to return it to a conditional status or terminate the agreement with it and included in that notice specification of any functions which the Secretary has determined the State Agency did not satisfactorily fulfill and of any requirements which the Secretary has determined it has not met;

(ii) provided the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

(iii) in the case of a proposed termination, consulted with the National Council on Health Planning and Development respecting the termination.

* * * * *

[(d)(1) If an agreement under subsection (b)(3) for the designation of a State Agency for a State is not in effect upon the expiration of—

[(A) the fourth fiscal year which begins after the calendar year in which the National Health Planning and Resources Development Act of 1974 is enacted; or

[(B)(i) if the legislature of the State is in a regular session on the date of the enactment of the Health Programs Extension Act of 1980 and the legislature will be in session for at least twelve months from such date, twenty-four months from such date, or

[(ii) if the legislature of the State is in session on the date of enactment but twelve months do not remain in such session after such date or if the legislature of the State is not in session on such date, twenty-four months after the beginning of the first regular session of the legislature beginning after such date,

whichever occurs later, the Secretary shall take the action prescribed by paragraph (2).

[(2) If upon the expiration of the period applicable under paragraph (1) an agreement is not in effect for the designation of a State Agency for a State, the Secretary shall until such an agreement is in effect take the following action:

[(A) During the first twelve months after the date of the expiration of the applicable period, the Secretary shall reduce by 25 percent the amount of each allotment, grant, loan, loan, and loan guarantee made to and each contract entered into with an individual or entity in such State during such period under this Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970.

[(B) During the second twelve months after such expiration date, the Secretary shall reduce by 50 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

[(C) During the third twelve months after such expiration date, the Secretary shall reduce by 75 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

[(D) After the expiration of thirty-six months after such expiration date, the Secretary may not make or enter into any such allotment, grant, loan, loan guarantee, and contract.]

* * * * *

STATE HEALTH PLANNING AND DEVELOPMENT FUNCTIONS

SEC. 1523. (a) Each State Agency of a State designated under section 1521(b)(3) shall, except as authorized under subsection (b), perform within the State the following functions:

(1)(A) * * *

* * * * *

(4)(A) Serve as the designated planning agency of the State for the purposes of section 1122 of the Social Security Act if the State has made an agreement pursuant to such section, and (B) administer a State certificate of need program which applies to the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation. A certificate of need program shall provide for procedures and penalties to enforce the requirements of the program. *The State Agency of a State may establish a system describing the extent to which and the manner in which health systems agencies may review applications for certificates of need. Under such system applications for certificates of need which are of the same or similar type shall be reviewed in the same manner.* In performing its functions under this paragraph the State Agency shall consider recommendations made by health systems agencies under section 1513(f).

* * * * *

(6) Review, *to the extent feasible and on a periodic basis (but not less often than every five years)* at least those institutional and home health services which are offered in the State and with respect to which goals have been established in the State health plan and, after consideration of recommendations submitted by health systems agencies under section 1513(g) respecting the appropriateness of such services, make public its findings. In making the appropriateness review required by this paragraph of a health service, the State Agency shall at least consider the need for the service, its accessibility and availability, financial viability, cost effectiveness, and the quality of service provided.

* * * * *

PART D—GENERAL PROVISIONS

DEFINITIONS

Sec. 1531. Except as otherwise provided, for purposes of this title:

(1) * * *

* * * * *

(3) The term “provider of health care” means an individual—

(A) * * *

* * * * *

(C) who receives (either directly or through the individual’s spouse) more than one-fifth of his gross annual income from any one or combination of—

(i) fees or other compensation for research into or instruction in the provision of health care,

(ii) entities engaged in the provision of health care or in research or instruction in the provision of health care,

(iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or

(iv) entities engaged in producing drugs or such other articles; or

(D) who is the member of the immediate family of an individual described in subparagraph (A), (B), or (C) [; or]

[(E) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.]

Notwithstanding subparagraph (B), an individual shall not be considered a provider of health care solely because the individual is the member of the governing board of one or more entities described in clause (ii) or (iv) of subparagraph (C).

* * * * *

(5) The term “institutional health services” means health services which (A) are provided through private and public hospitals, rehabilitation facilities, nursing homes, and other health care facilities, as defined by the Secretary by regulation, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term “expenditure minimum” means [\$250,000] \$500,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, [\$250,000] \$500,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

(6) For purposes of sections 1523 and 1527, the term “capital expenditure” means an expenditure—

(A) made by or on behalf of a health care facility (as such a facility is defined in regulations prescribed under paragraph (5)); and

(B)(i) which (I) under generally accepting accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under section 1527 shall be considered capital expenditures for purposes of sections 1523 and 1527, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 1527. For purposes of this paragraph, the term "expenditure minimum" means **[\$600,000]** *\$1,000,000* for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, **[\$600,000]** *\$1,000,000* or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

(7) For purposes of sections 1523 and 1527, the term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of **[\$400,000,]** *\$500,000*, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under this title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such Act. In determining whether medical equipment has a value in excess of **[\$400,000,]** *\$500,000*, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities, essential to the acquisition of such equipment shall be included.

* * * * *

SPECIAL PROVISIONS FOR CERTAIN STATES AND TERRITORIES

SEC. 1536. (a) Upon application of the chief executive officer of a State or the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, or America Samoa, it shall, upon approval of the

application, be considered to be a State for purposes of this title and—

- (1) no health service area shall be established within it,
- (2) no health system agency shall be designated for it,
- (3) the State Agency designated for it under section 1521 may, in addition to the functions prescribed by section 1523, perform the functions prescribed by section 1513 and shall be eligible to receive grants authorized by section 1640, and
- (4) the chief executive officer shall appoint the Statewide Health Coordinating Council prescribed by section 1524 in accordance with regulations of the Secretary.

An application made under this section for a fiscal year shall be made not later than November 1 in that fiscal year and shall contain the certification of the chief executive officer that the State is willing and able to meet the purposes of this title in such fiscal year without any health systems agency in the State.

(b)(1) Upon application of a State which has had an application approved under subsection (a), the Secretary shall reestablish in accordance with paragraph (2) the health service areas within the State and designate health systems agencies for such areas in accordance with section 1515.

(2) The health service areas in a State making such an application which were in existence on the date the application under section (a) was approved shall be reestablished by order of the Secretary, except that if the application under this subsection requests the Secretary to designate different health service areas, the Secretary shall designate, in accordance with section 1511, different health service areas for the State.

[AUTHORIZATIONS FOR FISCAL YEAR 1982]

[SEC. 1537. For grants and contracts under sections 1516(a), 1525(a), and 1534(a) there is authorized to be appropriated \$102,000,000 for fiscal year 1982. Of the amount appropriated under this section, not more than \$65,000,000 may be used for grants under section 1516(a).**]**

AUTHORIZATIONS

SEC. 1537. *The following amounts are authorized to be appropriated:*

- (1) For grants and contracts under section 1516(a), there are authorized to be appropriated \$42,000,000 for fiscal year 1986.*
- (2) For grants and contracts under section 1525(a), there are authorized to be appropriated \$21,400,000 for fiscal year 1986.*
- (3) For grants and contracts under section 1534(a), there are authorized to be appropriated \$1,500,000 for fiscal year 1986.*

[Effective October 1, 1986, title XV of the Public Health Service Act is repealed:]

[TITLE XV—NATIONAL HEALTH PLANNING AND DEVELOPMENT

[PART A—NATIONAL GUIDELINES FOR HEALTH PLANNING

[NATIONAL GUIDELINES FOR HEALTH PLANNING

[SEC. 1501. (a) The Secretary shall, within eighteen months after the date of the enactment of this title, by regulation issue guidelines concerning national health planning policy. Regulations under this subsection shall be promulgated in accordance with section 553 of title 5, United States Code.

[(b) The Secretary shall include in the guidelines issued under subsection (a) the following:

[(1) Standards respecting the appropriate supply, distribution, and organization of health resources. Such standards shall reflect the unique circumstances and needs of medically underserved populations including those in isolated rural communities.

[(2) A statement of national health planning goals developed after consideration of the priorities, set forth in section 1502, which goals, to the maximum extent practicable, shall be expressed in quantitative terms.

[(c) At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) or a revision under subsection (d) of such guidelines, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B, the State health planning and development agencies designated under part C, the Statewide Health Coordinating Councils established under part C, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by section 1503.

[(d) The Secretary shall, on an annual basis, review the standards and goals included in the guidelines issued under subsection (a). In conducting such a review, the Secretary shall review the health systems plans and annual implementation plans of health systems agencies and State health plans. If the Secretary proposes to revise a guideline issued under subsection (a), he shall make such revision by regulations promulgated in accordance with section 553 of title 5, United States Code.

[(e)(1) The Secretary may collect data to determine whether the health care delivery systems meet or are changing to meet the goals included in health systems plans under section 1513(b)(2) and State health plans under section 1524 and to determine the personnel, facilities, and other resources needed to meet such goals. The Secretary shall prescribe (A) the manner in which such data shall be assembled and reported to the Secretary by health systems agencies, State health planning and development agencies, and other entities, and (B) the definitions which shall be used by such agencies and entities in assembling and reporting such data.

[(2) The Secretary shall from the data collected under paragraph (1) periodically make public a (A) statement of the relationship be-

tween the goals contained in the health systems plans and the State health plans and the status of the supply, distribution, and organization of health resources with respect to which such goals were established, and (B) summary of changes (either through additions or reductions) in resources needed to meet such goals.

[NATIONAL HEALTH PRIORITIES

[SEC. 1502. (a) The Congress finds that the following deserve priority consideration in the formulation of national health planning goals and in the development and operation of Federal, State and area health planning and resources development programs:

[(1) The provision of primary care services for medically underserved populations, especially those which are located in rural or economically depressed areas.

[(2) The development of multi-institutional systems for coordination or consolidation of institutional health services (including obstetric, pediatric, emergency medical, intensive and coronary care, and radiation therapy services).

[(3) The development of medical group practices (especially those whose services are appropriately coordinated or integrated with institutional health services), health maintenance organizations, and other organized systems for the provision of health care.

[(4) The training and increased utilization of physician assistants, especially nurse clinicians.

[(5) The development of multi-institutional arrangements for the sharing of support services necessary to all health service institutions.

[(6) The promotion of activities to achieve needed improvements in the quality of health services, including needs identified by the review activities of Professional Standards Review Organizations under part B of title XI of the Social Security Act.

[(7) The development by health service institutions of the capacity to provide various levels of care (including intensive care, acute general care, and extended care) on a geographically integrated basis.

[(8) The promotion of activities for the prevention of disease, including studies of nutritional and environmental factors affecting health and the provision of preventive health care services.

[(9) The adoption of uniform cost accounting, simplified reimbursement, and utilization reporting systems and improved management procedures for health service institutions and the development and use of cost saving technology.

[(10) The development of effective methods of educating the general public concerning proper personal (including preventive) health care and methods for effective use of available health service.

[(11) The promotion of an effective energy conservation and fuel efficiency program for health service institutions to reduce the rate of growth of demand for energy.

[(12) The identification and discontinuance of duplicative or unneeded services and facilities.

[(13) The adoption of policies which will (A) contain the rapidly rising costs of health care delivery, (B) insure more appropriate use of health care services, and (C) promote greater efficiency in the health care delivery system.

[(14) The elimination of inappropriate placement in institutions of persons with mental health problems and the improvement of the quality of care provided those with mental health problems for whom institutional care is appropriate.

[(15) Assurance of access to community mental health centers and other mental health care providers for needed mental health services to emphasize the provision of outpatient as a preferable alternative to inpatient mental health services.

[(16) The promotion of those health services which are provided in a manner cognizant of the emotional and psychological components of the prevention and treatment of illness and the maintenance of health.

[(17) The strengthening of competitive forces in the health services industry wherever competition and consumer choice can constructively serve, in accordance with subsection (b), to advance the purposes of quality assurance, cost effectiveness, and access.

[(b)(1) The Congress finds that the effect of competition on decisions of providers respecting the supply of health services and facilities is diminished. The primary source of the lessening of such effect is the prevailing methods of paying for health services by public and private health insurers, particularly for inpatient health services and other institutional health services. As a result, there is duplication and excess supply of certain health services and facilities, particularly in the case of inpatient health services.

[(2) For health services, such as inpatient health services and other institutional health services, for which competition does not or will not appropriately allocate supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the exercise of their functions under this title take actions (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access and the other purposes of this title) to allocate the supply of such services.

[(3) For the health services for which competition appropriately allocates supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the performance of their functions under this title give priority (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access) to actions which would strengthen the effect of competition on the supply of such services.

[NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

[SEC. 1503. (a) There is established in the Department of Health, Education, and Welfare an advisory council to be known as the National Council on Health Planning and Development (hereinafter

in this section referred to as the "Council"). The Council shall advise, consult with, and make recommendations to, the Secretary with respect to (1) the development of national guidelines under section 1501, (2) the implementation and administration of this title and title XVI, and (3) an evaluation of the implications of new medical technology for the organization, delivery, and equitable distribution of health care services.

[(b)(1) The Council shall be composed of twenty members. The Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Assistant Secretary for Rural Development of the Department of Agriculture, and the Assistant Secretary for Health of the Department of Health, Education, and Welfare shall be nonvoting ex officio members of the Council. The remaining members shall be appointed by the Secretary and shall be persons who, as a result of their training, experience, or attainments, are exceptionally well qualified to assist in carrying out the functions of the Council. Of the voting members, not less than eight members shall be persons who are not providers of health care and those members shall include individuals who represent urban and rural medically underserved populations, not more than three shall be officers or employees of the Federal Government, not less than one member shall represent hospitals, not less than three shall be members of governing bodies of health systems agencies designated under part B, and not less than three shall be members of Statewide Health Coordinating Councils established under section 1524. The two major political parties shall have equal representation among the voting members on the Council.

[(2) The term of office of voting members of the Council shall be six years, except that—

[(A) of the members first appointed to the Council, four shall be appointed for terms of two years and four shall be appointed for terms of four years, as designated by the Secretary at the time of appointment; and

[(B) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

A member may serve after the expiration of his term until his successor has taken office.

[(3) The chairman of the Council shall be selected by the voting members from among their number. The term of office of the chairman of the Council shall be the lesser of three years or the period remaining in his term of office as a member of the Council.

[(c)(1) Except as provided in paragraph (2), the members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council.

[(2) Members of the Council who are full-time officers or employees of the United States shall receive no additional pay on account of their services on the Council.

[(3) While away from their homes or regular places of business in the performance of services for the Council, members of the

Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

[(d) The Council may appoint, fix the pay of, and prescribe the functions of such personnel as are necessary to carry out its functions. In addition, the Council may procure the services of experts and consultants as authorized by section 3109 of title 5, United States Code, but without regard to the last sentence of such section.

[(e) The provisions of section 14(a) of the Federal Advisory Committee Act shall not apply with respect to the Council.

[PART B—HEALTH SYSTEMS AGENCIES

HEALTH SERVICE AREAS

[SEC. 1511. (a) Except as provided in section 1536, there shall be established, in accordance with this section, health service areas throughout the United States with respect to which health systems agencies shall be designated under section 1515. Each health service area shall meet the following requirements:

[(1) The area shall be a geographic region appropriate for the effective planning and development of health services, determined on the basis of factors including population and the availability of resources to provide all necessary health services for residents of the area.

[(2) To the extent practicable, the area shall include at least one center for the provision of highly specialized health services.

[(3) The area, upon its establishment, shall have a population of not less than five hundred thousand or more than three million; except that—

[(A) the population of an area may be more than three million if the area includes a standard metropolitan statistical area (as determined by the Office of Management and Budget) with a population of more than three million, and

[(B) the population of any area may—

[(i) be less than five hundred thousand if the area comprises an entire State which has a population of less than five hundred thousand, or

[(ii) be less than—

[(I) five hundred thousand (but not less than two hundred thousand) in unusual circumstances (as determined by the Secretary), or

[(II) two hundred thousand in highly unusual circumstances (as determined by the Secretary), if the Governor of each State in which the area is located determines, with the approval of the Secretary, that the area meets the other requirements of this subsection.

[(4) To the maximum extent feasible, the boundaries of the area shall be appropriately coordinated with the boundaries of the areas designated under section 1152 of the Social Security

Act for Professional Standards Review Organizations, existing regional planning areas, and State planning and administrative areas.

The boundaries of a health service area shall be established so that, in the planning and development of health services to be offered within the health service area, any economic or geographic barrier to the receipt of such services in nonmetropolitan areas is taken into account. The boundaries of health service areas shall be established so as to recognize the differences in health planning and health services development needs between nonmetropolitan and metropolitan areas. Each standard metropolitan statistical area shall be entirely within the boundaries of one health service area, except that if the Governor of each State in which a standard metropolitan statistical area is located determines, with the approval of the Secretary, that in order to meet the other requirements of this subsection a health service area should contain only part of the standard metropolitan statistical area, then such statistical area shall not be required to be entirely within the boundaries of such health service area.

[(b)(1) Within thirty days following the date of the enactment of this title, the Secretary shall simultaneously give to the Governor of each State written notice of the initiation of proceedings to establish health service areas throughout the United States. Each notice shall contain the following:

[(A) A statement of the requirement (in subsection (a)) of the establishment of health service areas throughout the United States.

[(B) A statement of the criteria prescribed by subsection (a) for health service areas and the procedures prescribed by this subsection for the designation of health service area boundaries.

[(C) A request that the Governor receiving the notice (i) designate the boundaries of health service areas within his State, and where appropriate and in cooperation with the Governors of adjoining States, designate the boundaries within his State of health service areas located both in his State and in adjoining States, and (ii) submit (in such form and manner as the Secretary shall specify) to the Secretary, within one hundred and twenty days of the date of enactment of this title, such boundary designations together with comments, submitted by the entities referred to in paragraph (2), with respect to such designations.

At the time such notice is given under this paragraph to each Governor, the Secretary shall publish as a notice in the Federal Register a statement of the giving of his notice to the Governor and the criteria and procedures contained in such notice.

[(2) Each State's Governor shall in the development of boundaries for health service areas consult with and solicit the views of the chief executive officer or agency of the political subdivisions within the State, the State agency which administers or supervises the administration of the State's health planning functions under a State plan approved under section 314(a), each entity within the State which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b), and

each regional medical program established in the State under the title IX.

[(3)(A) Within two hundred and ten days after the date of enactment of this title, the Secretary shall publish as a notice in the Federal Register the health service area boundary designations. The boundaries for health service areas submitted by the Governors shall, except as otherwise provided in subparagraph (B), constitute, upon their publication in the Federal Register the boundaries for such health service areas.

[(B)(i) If the Secretary determines that a boundary submitted to him for a health service area does not meet the requirements of subsection (a), he shall, after consultation with the Governor who submitted such boundary, make such revision in the boundary for such area (and as necessary, in the boundaries for adjoining health service areas) as may be necessary to meet such requirements and publish such revised boundary (or boundaries); and the revised boundary (or boundaries) shall upon publication in the Federal Register constitute the boundary (or boundaries) for such health service area (or areas). The Secretary shall notify the Governor of each State in which is located a health service area whose boundary is revised under this clause of the boundary revision and the reasons for such revision.

[(ii) In the case of areas of the United States not included within the boundaries for health service areas submitted to the Secretary as requested under the notice under paragraph (1), the Secretary shall establish and publish in the Federal Register health service area boundaries which include such areas. The Secretary shall notify the Governor of each State in which is located a health service area the boundary for which is established under this clause of the boundaries established. In carrying out the requirement of this clause, the Secretary may make such revisions in boundaries submitted under subparagraph (A) as he determines are necessary to meet the requirement of subsection (a) for the establishment of health service areas throughout the United States.

[(4) The Secretary shall review on his own initiative or at the request of any Governor or designated health systems agency the appropriateness of the boundaries of the health service areas established under paragraph (3) and, if he determines that—

[(A) the boundaries for a health service area no longer meet the requirements of subsection (a), or

[(B) the boundaries for a proposed revised health service area meet the requirements of subsection (a) in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts,

he shall revise the boundaries in accordance with the procedures prescribed by paragraph (3)(B)(ii). If the Secretary acts on his own initiative to revise the boundaries of any health service area, he shall consult with the Governor of the State or States which would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agency or agencies and the established State-wide Health Coordinating Council or Councils that would be affected by the revision. A Governor may request a revision of the boundaries of a health service area only after consultation with the

Governor of any State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agencies and the established Statewide Health Coordinating Council or Councils that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. A designated health systems agency may request a revision of the boundaries of its health service area only after consultation with the Governor of the State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, the Statewide Health Coordinating Council of such State or States, and the health systems agencies that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. No proposed revision of the boundaries of a health service area shall comprise an entire State without the prior consent of the Governor of such State. In addition, for each proposed revision of the boundaries of a health service area, the Secretary shall give notice and an opportunity for a hearing to all interested persons and make a written determination of his findings and decision.

[(5) Within one year after the date of the enactment of this title the Secretary shall complete the procedures for the initial establishment of the boundaries of health service areas which (except as provided in section 1536) include the geographic area of all the States.

[HEALTH SYSTEMS AGENCIES

[SEC. 1512. (a) DEFINITION.—For purposes of this title, the term “health systems agency” means an entity which is organized and operated in the manner described in subsection (b) and which is capable, as determined by the Secretary, of performing each of the functions described in section 1513. The Secretary shall by regulation establish standards and criteria for the requirements of subsection (b) and section 1513.

[(b)(1) LEGAL STRUCTURE.—A health system agency for a health service area shall be—

[(A) a nonprofit private corporation (or similar legal mechanism such as a public benefit corporation) which is incorporated in the State in which the largest part of the population of the health service area resides, which is not a subsidiary of, or otherwise controlled by, and other private or public corporation or other legal entity, and which only engages in health planning and development functions;

[(B) a public regional planning body if (i) it has a governing board composed of a majority of elected officials of units of general local government or it is authorized by State law (in effect before the date of enactment of this subsection) to carry out health planning and review functions such as those described in section 1513, and (ii) its planning area is identical to the health service area; or

[(C) a single unit of general local government if the area of the jurisdiction of that unit is identical to the health service area.

A health system agency may not be an educational institution or operate such an institution.

[(2) STAFF.—

[(A) EXPERTISE.—A health systems agency shall to the extent practicable, have a staff which provides the agency with expertise in the following: (i) Administration, (ii) the gathering and analysis of data, (iii) health planning, (iv) development and use of health (including mental health) resources, (v) financial and economic analysis, and (vi) prevention of disease and other public health matters. The functions of planning and of development of health (including mental health) resources shall be conducted by staffs with skills appropriate to each function. At least one member of the staff shall be designated to have the responsibility of providing the members of the governing body of an agency (particularly the consumer members) with such information and technical assistance as they may require to effectively perform their functions.

[(B) SIZE AND EMPLOYMENT.—The size of the professional staff of any health systems agency shall be not less than three, except that if the quotient of the population (rounded to the nearest three hundred thousand) of the health service area which the agency serves divided by three hundred thousand is greater than three, the minimum size of the professional staff shall be the lesser of (i) such quotient, or (ii) twenty-five. The members of the staff shall be selected, paid, promoted, and discharged in accordance with such system as the agency may establish, except that the rate of pay for any position shall not be less than the rate of pay prevailing in the health service area for similar positions in other public or private health service entities. If necessary for the performance of its functions, a health systems agency may employ consultants and may contract with individuals and entities for the provision of services. Compensation for consultants and for contracted services shall be established in accordance with standards established by regulation by the Secretary.

[(3) GOVERNING BODY.—

[(A) IN GENERAL.—A health systems agency which is a public regional planning body or unit of general local government shall, in addition to any other governing body, appoint a governing body for health planning in accordance with subparagraph (C) which shall have the responsibilities prescribed by subparagraph (B), and which shall have exclusive authority to perform the functions described in section 1513. Any other health systems agency shall have a governing body composed, in accordance with subparagraph (C), of not less than ten members and of not more than thirty members, except that the number of members may exceed thirty if the governing body has established another unit (referred to in this paragraph as an "executive committee") composed, in accordance with subparagraph (C), of not less than ten members and not more than thirty members of the governing body and has delegated to

that unit the authority to take such action (other than the establishment and revision of the plans referred to in subparagraph (B)(ii)) as the governing body is authorized to take.

[(B) RESPONSIBILITIES.—The governing body—

[(i) shall be responsible for—

[(I) the internal affairs of the health systems agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government, and

[(II) procedures and criteria developed and published pursuant to section 1532 and applicable to its functions under subsections (e), (f), and (g) of section 1513;

[(ii) shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 1513(b) and in the case of a health systems agency which is a public regional planning body or unit of general local government, the planning body or unit of government shall be given, in accordance with sections 1513(b)(2) and 1513(b)(3), a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the governing body and to propose additions to and other revisions in it;

[(iii) shall be responsible for the approval or disapproval of grants and contracts made and entered into under section 1513(c)(3).

[(iv) shall be responsible for the approval or disapproval of all actions taken pursuant to subsections (e), and (f), and (g), of section 1513;

[(v) shall (I) issue an annual report concerning the activities of the agency, (II) include in that report the health systems plan and annual implementation plan developed by the agency, and a listing of the agency's income, expenditures, assets, and liabilities, and (III) make the report readily available to the residents of the health service area and the various communications media serving such area;

[(vi) shall reimburse (or when appropriate make advances to) its members for the reasonable costs incurred in attending meetings of the governing body and performing any other duties and functions of the health systems agency;

[(vii) shall meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee meets at least twice that year; and

[(viii) shall (I) hold in public meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body,

that information respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (II) give adequate notice to the public of such meetings, and (III) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public.

The governing body (and executive committee (if any)) of a health systems agency shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all of its members and at which a quorum is in attendance. A quorum for a governing body and executive committee shall be not less than one-half of its members.

[(C) COMPOSITION.—The membership of the governing body and the executive committee (if any) of an agency shall meet the following requirements:

[(i) A majority (but not more than 60 per centum of the members) shall be (I) residents of the health service area served by the entity who are consumers of health care and who are not providers of health care, and (II) broadly representative of the health service area and shall include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas of the health service area and major purchasers of health care (including labor organizations and business corporations) in the area.

[(ii) The remainder of the members shall be residents of, or have their principal place of business in, the health service area served by the agency who are providers of health care and who represent (I) physicians (particularly practicing physicians), dentists, nurses, optometrists, podiatrists, physician assistants, and other health professionals, (II) health care institutions (particularly hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities and health maintenance organizations, (III) health care insurers, (IV) health professional schools, (V) the allied health professions, and (VI) other providers of health care. Not less than one-half of the providers of health care who are members of the governing body or executive committee of a health systems agency shall be direct providers of health care (as described in section 1531(3)) and of such direct providers of health care, at least one shall be a person engaged in the administration of a hospital.

[(iii) The membership shall—

[(I) include (either through consumer or provider members) public elected officials and other representa-

tives of units of general purpose local government in the agency's health service area and representatives of public and private agencies in the area concerned with health,

[(II) include a percentage of individuals who reside in nonmetropolitan areas within the health service area which percentage is at least equal to the percentage of residents of the area who reside in nonmetropolitan areas,

[(III) include (through consumer and provider members) individuals who are knowledgeable about mental health services,

[(IV) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the Veterans' Administration, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated for such purpose, and

[(V) if the agency serves an area in which there is located one or more health maintenance organizations, include at least one member who is representative of such organizations.

[(iv) If, in the exercise of its functions, a governing body or executive committee appoints a subcommittee or an advisory group, it shall, to the extent practicable, make its appointments to any such subcommittee or group in such a manner as to provide the representation on such subcommittee or group described in this subparagraph, except that appointments shall be made to such subcommittees and groups in such a manner that a majority of their members shall be consumers of health care.

For purposes of clause (iii)(I), to be considered a representative of a unit of general purpose local government, an individual must be appointed by such unit or a combination thereof, and the State government of a State which is comprised of a single health service area shall be deemed to be a unit of general purpose local government. A member of a governing body appointed pursuant to clause (iii)(IV) shall not be considered in determining the number of members of the governing body for purposes of the numerical limit prescribed by subparagraph (A).

[(D) SELECTION.—Each health systems agency shall establish a process for the selection of the members of its governing body which process is designed to assure that (i) such members are selected in accordance with the requirements of subparagraph (C), (ii) there is the opportunity for broad participation in such process by the residents of the health service area of the agency, and (iii) the participation of such residents will be encouraged and facilitated. Such process shall prohibit the selection of more than one-half of the members of such body by members of such body. Each agency shall make public such process and report it to the Secretary. The requirements of this subparagraph shall apply with respect to the selection of members of a subarea advisory council if the council is authorized

to select or selects one or more members of the governing body of a health systems agency.

【(E) SUPPORT.—Each health systems agency shall have an identifiable program of providing assistance to the members of its governing body, executive committee (if any), and any entity appointed by the governing body or executive committee in making decisions for the agency, and shall include in such program means to determine the support needs of the members and to provide for meeting those needs (including the provision of training and continuing education).

【(F) CONFLICTS OF INTEREST.—No member of a governing body, executive committee, or any entity appointed by a governing body, or executive committee may, in the exercise of any function of the agency described in subsection (e), (f), or (g) of section 1513, vote on any matter before the governing body, executive committee, or any such entity respecting any individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the governing body, committee, or entity to make a written disclosure of such relationship before any action is taken by the body, committee, or entity with respect to such matter in the exercise of any function of the agency described in section 1513 and to make such relationship public in any meeting in which such action is to be taken.

【(4) LIABILITY.—

【(A) IN GENERAL.—Except as provided in subparagraph (B)—

【(i) a health systems agency shall not, by reason of the performance of any duty, function, or activity, required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State (or political subdivision thereof) if the member of the governing body of the agency or employee of the agency who acted on behalf of the agency in the performance of such duty, function, or activity acted within the scope of his duty, function, or activity as such a member or employee, exercised due care, and acted without malice toward any person affected by it; and

【(ii) no individual member of the governing body of a health systems agency or employee of a health systems agency shall, by reason of his performance on behalf of the agency of any duty, function, or activity required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member or employee, and, with respect to such performance, acted without gross negligence or malice toward any person affected by it.

[(B) EXCEPTION.—Subparagraph (A) does not apply with respect to civil actions for bodily injury to individuals or physical damages to property brought against a health systems agency or any member of the governing body of or employee of such an agency.

[(5) PRIVATE CONTRIBUTIONS.—No health systems agency may accept any funds or contributions of services or facilities from any individual or private entity which has a financial, fiduciary, or other direct interest in the development, expansion, or support of health resources unless, in the case of an entity, it is an organization described in section 509(a) of the Internal Revenue Code of 1954 and is not directly engaged in the provision of health care in the health service area of the agency. For purposes of this paragraph, an entity shall not be considered to have an interest solely on the basis of its providing (directly or indirectly) health care for its employees or health insurance.

[(6) OTHER REQUIREMENTS.—Each health system agency shall—

[(A) provide that any executive committee of the agency and any entity appointed by the governing body or executive committee of the agency shall (i) hold in public meetings to conduct the business of the committee or entity (other than any part of a meeting in which it is likely, as determined by the executive committee or entity, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating the agency's participation in a judicial proceeding will be disclosed), and (ii) give adequate notice of its meetings to those persons who have requested such notice.

[(B) make such reports, in such form and containing such information (other than information respecting the performance or remuneration of an employee of the agency the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee or information relating the agency's participation in a judicial proceeding), concerning its structure, operations, performance of functions, and other matters as the Secretary may from time and time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

[(C) provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this title and section 1640; and

[(D) permit the Secretary and Comptroller General of the United States, or their representatives, to have access for the purpose of audit and examination to any books, documents, papers, and records pertinent to the disposition of amounts received from the Secretary under this title and section 1640.

[(c) SUBAREA COUNCILS.—A health systems agency may establish subarea advisory councils representing parts of the agency's health service area to advise the governing body of the agency on the performance of its functions. The composition of a subarea advisory council shall conform to the requirement of subsection (b)(3)(C).

[FUNCTIONS OF HEALTH SYSTEMS AGENCIES

[SEC. 1513. (a) For the purpose of—

[(1) improving the health of residents of a health service area,

[(2) increasing the accessibility (including overcoming geographic, architectural, and transportation barriers), acceptability, continuity, and quality of the health services provided them,

[(3) restraining increases in the cost of providing them health services,

[(4) preventing unnecessary duplication of health resources, and

[(5) preserving and improving, in accordance with section 1502(b), competition in the health service area,

each health systems agency shall have as its primary responsibility provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency. None of the funds authorized to be appropriated under this title may be used by a health systems agency directly to pay any individual to influence the issuance, amendment, or revocation of any Executive order or regulation by any Federal, State, or local chief executive officer or agency or to influence the passage, amendment or defeat of any legislation by the Congress or by any State or local legislative body. The preceding sentence does not apply with respect to compensation paid by a health systems agency to an employee of the agency unless the primary responsibility of the employee for the agency is to influence such governmental action. To meet its primary responsibility, a health systems agency shall carry out the functions described in subsections (b) through (g) of this section.

[(b) In providing health planning and resources development for its health service area, a health systems agency shall perform the following functions:

[(1) The agency shall assemble and analyze data concerning—

[(A) the status (and its determinants) of the health of the residents of its health service area,

[(B) the status of the health care delivery system in the area and the use of that system by the residents of the area,

[(C) the effect the area's health care delivery system has on the health of the residents of the area,

[(D) the number, type, and location of the area's health resources, including health services, manpower, and facilities.

[(E) the patterns of utilization of the area's health resources, and

[(F) the environmental and occupational exposure factors affecting immediate and long-term health conditions.

The agency shall also assemble and report to the Secretary such data (including data on the personnel, facilities, and other

resources needed to meet the goals set forth in the agency's health system plan) as the Secretary may require to carry out his responsibilities under section 1501(e). The Secretary may not require the assembling and reporting of data under this paragraph which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this title. In carrying out this paragraph, the agency shall to the maximum extent practicable use existing data (including data developed under Federal health programs) and coordinate its activities with the cooperative system provided for under section 306(e).

[(2) The agency shall, after appropriate consideration of the recommended national guidelines for health planning policy issued by the Secretary under section 1501, the priorities set forth in section 1502, and the data developed pursuant to paragraph (1), establish (in accordance with the format established pursuant to section 1524(c)(1)), at least triennially review, and amend as necessary a health systems plan (hereinafter in this title referred to as the "HSP") which shall be a detailed statement of goals (A) describing a healthful environment (primarily with regard to health care equipment and to health services provided by health care institutions, health care facilities, and other providers of health care and to other health resources) and health systems in the area which when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; (B) which are responsive to the unique needs and resources (including entities described in section 1532(c)(7)) of the area; (C) which take into account the national guidelines for health planning policy issued by the Secretary under section 1501 respecting supply, distribution, and organization of health resources and services; (D) which are responsive to statewide health needs as determined by the State health planning and development agency; (E) which describe the institutional health services (as defined in section 1531(5)) needed to provide for the well-being of persons receiving care within the health service area, including, at a minimum, acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and (F) which describe other health services needed to provide for the well-being of persons receiving care within the health service areas, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The HSP of the agency shall include goals for the delivery of mental health services in its health service area which goals shall be developed under a procedure under which persons (acting as an advisory group or subcommittee appointed by the agency or, if the agency requests and is authorized by the Secretary to use an existing group, acting as part of such a group) knowledgeable about such services (including services for alcohol and drug abuse) will be consulted with respect to such goals. The HSP shall describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources re-

quired to meet the goals of the HSP and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Before establishing or amending an HSP and in its review of an HSP, a health systems agency shall conduct a public hearing on the proposed HSP and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to such hearing, the agency shall publish in at least two newspapers of general circulation throughout its health service area a notice of its consideration of the proposed HSP, the time and place of the hearing, the place at which interested persons may consult the HSP in advance of the hearing, and the place and period during which to submit written comments to the agency on the HSP. If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed HSP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the HSP established by the agency shall be appended to the HSP. If the goals contained in the HSP are not consistent with guidelines issued by the Secretary under section 1501, it shall provide the State health planning and development agency and the Secretary with a detailed statement of the reasons for the inconsistency between such goals and guidelines. When making such HSP available to a Statewide Health Coordinating Council under section 1524(c)(2)(A), the agency shall also report such statement to such Council.

[(3) The agency shall establish, annually review, and amend as necessary an annual implementation plan (hereinafter in this title referred to as the "AIP") which describes objectives which will achieve the goals of the HSP (as stated in the HSP of the agency or, if revised under section 1524(c)(2)(A) when included in the State health plan, as so revised) and priorities among the objectives. In establishing the AIP, the agency shall give priority to those objectives which will maximally improve the health of the residents of the area, as determined on the basis of the relation of the cost of attaining such objectives to their benefits, and which are fitted to the special needs of the area. The AIP shall include a statement of the personnel, facilities, and other resources which the agency determines are required to meet the objectives described pursuant to the first sentence. The AIP shall be established, annually reviewed, and amended in accordance with the procedures set forth in the last two sentences of paragraph (2). If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed AIP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the AIP approved by the agency shall be appended to the AIP.

[(4) The agency shall develop and publish specific plans and projects for achieving the objectives established in the AIP.

[(c) A health systems agency shall implement its HSP and AIP, and in implementing the plans it shall perform at least the following functions:

[(1) The agency shall seek, to the extent practicable, to implement its HSP and AIP with the assistance of individuals and public and private entities in its health service area.

[(2) The agency shall provide, in accordance with the priorities established in the AIP, technical assistance in obtaining and filling out the necessary forms and may provide other technical assistance to individuals and public and private entities for the development of projects and programs which the agency determines are necessary to achieve the health systems described in the HSP, including assistance in meeting the requirements of the agency prescribed under section 1532(b).

[(3) The agency shall, in accordance with the priorities established in the AIP, make grants to public and nonprofit private entities and enter into contracts with individuals and public and nonprofit private entities to assist them in planning and developing projects and programs which the agency determines are necessary for the achievement of the health systems described in the HSP. Such grants and contracts shall be made from the Area Health Services Development Fund of the agency established with funds provided under grants made under section 1640. No grants or contract under this subsection may be used (A) to pay the costs incurred by an entity or individual in the delivery of health services (as defined in regulations of the Secretary), or (B) for the cost of construction or modernization of medical facilities. No single grant or contract made or entered into under this paragraph shall be available for obligation beyond the one year period beginning on the date the grant or contract was made or entered into unless another grant or contract is made or entered into, in which case the funds under the first grant or contract shall remain available for the period of the second grant or contract. Funds from a first grant or contract which remain available for obligation in the period of a second grant or contract shall not be considered in determining the amount of the second grant or contract. If an individual or entity receives a grant or contract under this paragraph for a project or program, such individual or entity may receive only one more such grant or contract for such project or program.

[(d)(1) Each health systems agency shall coordinate its activities with—

[(A) each Professional Standards Review Organization (designated under section 1152 of the Social Security Act),

[(B) entities referred to in paragraphs (1) and (2) of section 204(a) of the Demonstration Cities and Metropolitan Development Act of 1966 and regional and local entities the views of which are required to be considered under regulations prescribed under section 403 of the Intergovernmental Cooperation Act of 1968 to carry out section 401(b) of such Act,

[(C) other appropriate general or special purpose regional planning or administrative agencies (including area agencies on aging and local and regional alcohol abuse, drug abuse, and mental health planning agencies),

[(D) any entity of the State in which the agency is located which reviews the rates or budgets of health care facilities located in the agency's health service area, and

[(E) any other appropriate entity,

in the health systems agency's health service area. The agency shall, as appropriate, secure data from them for use in the agency's planning and development activities, enter into agreements with them which will assure that actions taken by such entities which alter the area's health systems will be taken in a manner which is consistent with the HSP and the AIP in effect for the area, and, to the extent practicable, provide technical assistance to such entities.

[(2) Each health systems agency which has all or part of its health service area within a part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its activities with the activities of any other health systems agency which has any part of its health service area within such standard metropolitan statistical area. Such coordination shall at least provide that each health systems agency designated for a health service area within any part of a single standard metropolitan statistical area shall review (A) each HSP and AIP for each such health service area, (B) the criteria used in accordance with section 1532 for reviews affecting any such area, and (C) each decision under certificate of need programs which affect any such area.

[(3) The Secretary shall be regulation provide for the sharing by health systems agencies of health planning data with Indian tribes and Alaska Native Villages.

[(4) Health systems agencies that have an Indian tribe or intertribal Indian organization (referred to in subsection (e)(1)(B)) located within such agencies' health service areas shall carry out their functions under this section in a manner that recognizes tribal self-determination. Such agencies shall seek to enter into agreements with the Indian tribes and intertribal organizations located within their health service areas on matters of mutual concern as defined in regulations of the Secretary.

[(e)(1)(A) Except as provided in subparagraph (B), each health systems agency shall review and approve or disapprove each proposed use within its health service area of Federal funds—

[(i) appropriated under this Act for grants, contracts, loans, or loan guarantees for the development, expansion, or support of health resources by any entity other than the government of a State unless such resources are solely within the health service area of such agency; or

[(ii) made available by the State in which the health service area is located (from an allotment, contract, or grant to the State under an Act referred to in clause (i)) for grants or contracts for the development, expansion, or support of health resources.

[(B) A health systems agency shall not review and approve or disapprove the proposed use within its health service area of Feder-

al funds appropriated for grants or contracts for research or training unless the grants or contracts are to be made, entered into, or used for the development, expansion, or support of health resources which, in the case of grants or contracts for training, would make a significant change in the health services available in the health service area or which, in the case of grants or contracts for research, would significantly change the delivery of health services, or the distribution or extent of health resources, available to persons in the health service area other than those who are participants in such research. In the case of a proposed use within the health service area of a health systems agency of Federal funds described in subparagraph (A) by an Indian tribe (as defined in section (b) of the Indian Self-Determination and Education Assistance Act) or intertribal Indian organization for any program or project which will be located within or will specifically serve—

[(i) a federally recognized Indian reservation,

[(ii) any land area in Oklahoma which is held in trust by the United States for Indians or which is a restricted Indian-owned land area, or

[(iii) a Native village in Alaska (as defined in section 3(c) of the Alaska Native Claims Settlement Act),

a health systems agency shall only review and comment on such proposed use.

[(2) Notwithstanding any other provision of this Act or any other Act referred to in paragraph (1), the Secretary shall allow a health systems agency sixty days to make the review required by paragraph (1)(A)(i). If under paragraph (1)(A)(i) an agency disapproves a proposed use in its health service area of Federal funds described in paragraph (1), the Secretary may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Secretary shall give the appropriate State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Secretary its comments on the decision. The Secretary, after taking into consideration such State agency's comments (if any), may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Secretary to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.

[(3) The Governor of a State shall allow health systems agencies sixty days to make the review required by paragraph (1)(A)(ii). If under such paragraph an agency disapproves a proposed use of Federal funds in its health service area, the Governor may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Governor shall give the State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Governor its comments on the decision. The Governor, after taking into consideration such State Agency's comments (if any), may make such Federal funds avail-

able for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Governor to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.

[(4) Each health systems agency shall provide each Indian tribe or intertribal Indian organization which is located within the agency's health service area information respecting the availability of the Federal funds described in the first sentence of this subsection.

[(f)(1) Except as provided in paragraph (2), to assist State health planning and development agencies in carrying out their functions under paragraphs (4) and (5) of section 1523(a) each health systems agency shall review and make recommendations to the appropriate State health planning and development agency respecting the need for new institutional health services proposed to be offered or developed in the health service area of such health systems agency.

(2) If a State health planning and development agency for a State establishes a system under section 1523(a)(4) for review by health systems agencies of applications for certificates of need, each health systems agency in such State shall make such review only to the extent authorized by and in accordance with such system.

[(g)(1) Except as provided in paragraph (2), each health systems agency shall review on a periodic basis (but at least every five years) at least those institutional and home health services which are offered in the health service area of the agency and with respect to which goals have been established in the State health plan and shall make recommendations to the State health planning and development agency designated under section 1521 for each State in which the health systems agency's health service area is located respecting the appropriateness in the area of such services.

[(2) A health systems agency shall complete its initial review of health services within three years after the date of the agency's designation under section 1515(c).

[(3) In making the appropriateness review required by paragraph (1) of a health service, each health systems agency shall at least consider the need for the service, its accessibility and availability, financed viability, cost effectiveness, and the quality of service provided.

[(h)(1) Each health systems agency shall collect annually on a form developed in consultation with the State health planning and development agency for (or agencies) the rates charged for each of the twenty-five most frequently used hospital services in the State (or States) including the average semiprivate and private room rates.

[(2) Each health systems agency shall make available to the public for inspection and copying (at a reasonable expense to the public) the information supplied to the health systems agency pursuant to this subsection in readily understandable language and in a manner designed to facilitate comparisons among the hospitals in the health systems agency's health service area.

【ASSISTANCE TO ENTITIES DESIRING TO BE DESIGNATED AS HEALTH SYSTEMS AGENCIES

【SEC. 1514. The Secretary shall provide all necessary technical and other nonfinancial assistance (including the preparation of prototype plans of organization and operation) to public or nonprofit private entities which—

【(1) express a desire to be designated as health systems agencies, and

【(2) the Secretary determines have a potential to meet the requirements of a health systems agency specified in sections 1512 and 1513.

to assist such entities in developing applications to be submitted to the Secretary under section 1515 and otherwise in preparing to meet the requirements of this part for designation as a health systems agency.

【DESIGNATION OF HEALTH SYSTEMS AGENCIES

【SEC. 1515. (a) At the earliest practicable date after the establishment under section 1511 of health service areas (but not later than eighteen months after the date of enactment of this title) the Secretary shall enter into agreements in accordance with this section for the designation of health systems agencies for such areas.

【(b)(1) The Secretary may enter into agreements with entities under which the entities would be designated as the health systems agencies for health service areas on a conditional basis with a view to determining their ability to meet the requirements of section 1512(b), and their capacity to perform the functions prescribed by section 1513.

【(2) During any period of conditional designation, the Secretary may require that the entity conditionally designated meet only such of the requirements of section 1512(b) and perform only such of the functions prescribed by section 1513 as he determines such entity to be capable of meeting and performing.

【(3) Any agreement under which any entity is conditionally designated as a health systems agency may be terminated by such entity upon ninety days notice to the Secretary or by the Secretary upon ninety days notice to such entity if the Secretary determines, in accordance with subsection (c)(1)(B), that the entity is not complying with the provisions of such agreement.

【(4) The Secretary may not enter into an agreement with any entity under paragraph (1) for conditional designation as a health systems agency for a health service area until—

【(A) the entity has submitted an application for such designation which contains assurances satisfactory to the Secretary that upon completion of the period of conditional designation the applicant will be organized and operated in the manner described in section 1512(b) and will be qualified to perform the functions prescribed by section 1513;

【(B) a plan for the orderly assumption and implementation of the functions of a health systems agency has been received from the applicant and approved by the Secretary; and

【(C) the Secretary has consulted with the Governor of each State in which such health service area is located and with

such other State and local officials as he may deem appropriate, with respect to such designation.

In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor or a Statewide Health Coordinating Council for approval. When the Secretary enters into an agreement with an entity under paragraph (1), the Secretary shall notify the Governor of the State in which such entity is located of such agreement.

[(c)(1)(A) The Secretary shall enter into an agreement with an entity for its designation as a health systems agency if, on the basis of an application under paragraph (2) (and, in the case of an entity conditionally designated, on the basis of its performance during a period of conditional designation under subsection (b) as a health systems agency for a health service area), the Secretary determines that such entity is capable of fulfilling, in a satisfactory manner, the requirements and functions of a health systems agency. Any such agreement under this subsection with an entity may be renewed in accordance with paragraph (3), shall contain such provisions respecting the requirements of sections 1512(b) and 1513 and such conditions designed to carry out the purpose of this title, as the Secretary may prescribe, and shall be for a term of not to exceed thirty-six months; except that, prior to the expiration of such term, such agreement may be terminated—

[(i) by the entity at such time and upon such notice to the Secretary as he may by regulation prescribe, or

[(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the entity is not complying with the provisions of such agreement.

A designation agreement under this subsection may be terminated by the Secretary before the expiration of its term if the health service area with respect to which the agreement was entered into is revised under section 1511(b)(4) and the Secretary determines, after consultation with the Governor and Statewide Health Coordinating Council of each State in which the health service area (as revised) is located, that the health systems agency designated under such agreement cannot effectively carry out the agreement for the area (as revised). In terminating an agreement under the preceding sentence, the Secretary may provide that the termination not take effect before an agreement for the designation of a new agency takes effect and shall provide the agency designated under the agreement to be terminated an opportunity to terminate its affairs in a satisfactory manner.

[(B) Before the Secretary may terminate, under subsection (b)(3) or subparagraph (A)(ii) of this paragraph, an agreement with an entity for conditional designation or designation as the health systems agency for a health service area, the Secretary shall—

[(i) consult with the Governor and the Statewide Health Coordinating Council of each State in which is located the health service area respecting the proposed termination,

[(ii) give the entity notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the entity is not in compliance with the agreement, and (II) the actions that

the entity should take to come into compliance with the agreement, and

[(iii) provide the entity with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement under subsection (b) or this subsection to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the entity with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the entity an opportunity for a hearing on the matter specified in the notice.

[(2) The Secretary may not enter into an agreement with any entity under paragraph (1) for designation as a health systems agency for a health service area unless the entity has submitted an application to the Secretary for designation as a health systems agency, and the Governor of each State in which the area is located has been consulted respecting such designation of such entity. Such an application shall contain assurances satisfactory to the Secretary that the applicant meets the requirements of section 1512(b) and is qualified to perform or is performing the functions prescribed by section 1513. In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor or a Statewide Health Coordinating Council for approval.

(3)(A) An agreement under this subsection for the designation of a health systems agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon review (as provided in section 1535) of the agency's operation and performance of its functions, he determines that it has fulfilled, in a satisfactory manner, the functions of health systems agency prescribed by section 1513 during the period of the agreement to be renewed and continues to meet the requirements of section 1512(b).

[(B) If upon a review under section 1535 of the agency's operation and performance of its functions the Secretary determines that it has not fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 1513 during the period of the agreement to be renewed or does not continue to meet the requirements of section 1512(b), he may terminate such agreement or return such agency to a conditionally designated status under subsection (b). The Secretary may not terminate an agreement or return an agency to a conditionally designated status unless the Secretary has—

[(i) provided the agency with notice of his intent to return it to a conditional status or terminate the agreement with the agency and included in that notice specification of any functions which the Secretary has determined the agency did not satisfactorily fulfill and of any requirements which the Secretary has determined the agency has not met;

[(ii) provided the agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

[(iii) in the case of a proposed termination of an agreement, consulted with the National Council on Health Planning and Development respecting the termination.

[(4) Before renewing an agreement with a health systems agency under this subsection the Secretary shall provide the State health planning and development agency of the State in which the health systems agency is located an opportunity to comment on the performance of such agency and to provide a recommendation on whether such agreement should be renewed and whether the agency should be returned to a conditional status as authorized by paragraph (3).

[(5) If the Secretary enters into an agreement under this subsection with an entity or renews such an agreement, the Secretary shall notify the Governor of the State in which such entity is located of the agreement, and any renewal of the agreement.

[(d) If a designation agreement under subsection (b) or (c) of a health systems agency for a health service area is terminated before the date prescribed for its expiration or is not renewed, the Secretary shall, upon application and in accordance with subsection (b) or (c) (as the Secretary determines appropriate), enter into a designation agreement with an entity to be the health systems agency for such area.

【PLANNING GRANTS

【SEC. 1516 (a) The Secretary shall make in each fiscal year a grant to each health systems agency with which there is in effect a designation agreement under subsection (b) or (c) of section 1515. A grant under this subsection shall be made on such conditions (including submission of the health systems agency's budget) as the Secretary determines is appropriate, shall be used by a health systems agency for compensation of agency personnel, collection of data, planning, and the performance of the functions of the agency. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, except that (1) no funds under any grant to an agency may be obligated in any period in which a designation agreement is not in effect for such agency, and (2) notwithstanding clause (1), a grant made to a conditionally designated entity with which the Secretary will not enter into a designation agreement under section 1515(c) shall be available for obligation for such additional period as the Secretary determines such entity will require to satisfactorily terminate its activities under the agreement for its conditional designation. A health systems agency may use funds under a grant under this subsection to make payments under contracts with other entities to assist the health systems agency in the performance of its functions; but it shall not use funds under such a grant to make payments under a grant or contract with another entity for the development or delivery of health services or resources.

[(b) The amount of any grant under subsection (a) to a health systems agency designated under section 1515(b) shall be determined by the Secretary.

[(c) The amount of a grant under subsection (a) to a health systems agency designated under section 1515(c) shall be the greater of the amount determined under paragraph (1), (2), or (3) as follows:

[(1) The amount of a grant to a health systems agency shall be the lesser of—

[(A) the product of \$0.60 and the population of the health service area for which the agency is designated, or

[(B) \$3,750,000.

[(2)(A) If the application of the health systems agency for such grant states that the agency, in its latest fiscal year ending before the period in which such grant will be available for obligation, collected non-Federal funds meeting the requirements of subparagraph (B) for the purposes for which such grant shall be the sum of—

[(i) the amount determined under subparagraph (A) or (C), whichever is applicable, and

[(ii) the lesser of the amount of such non-Federal funds or \$200,000 or the product of \$0.25 and the population of the health service area for which the agency is designated, whichever is greater.

[(B) The non-Federal funds which an agency may use for the purpose of obtaining a grant under subsection (a) which is computed on the basis of the formula prescribed by subparagraph (A) shall be funds which are not paid to the agency for the performance of particular services by it and which are otherwise contributed to the agency without conditions as to their use other than the condition that the funds shall be used for the purposes for which a grant made under this section may be used.

[(3) The amount of a grant to a health systems agency may not be less than—

[(A) in the case of a grant made in the fiscal year ending September 30, 1979, \$175,000 and, to the extent appropriations are specifically made after October 1, 1979, to provide the additional amount authorized by this clause, an amount which bears the same ratio to \$50,000 as the number of days beginning in the period beginning on October 1, 1979, and ending on the date of the period for which the grant was made bears to 365,

[(B) \$225,000 in the case of a grant made in the fiscal year ending September 30, 1980,

[(C) \$245,000 in the case of a grant made in the fiscal year ending September 30, 1981, and

[(D) \$100,000 in the case of a grant made in any succeeding fiscal year.

[(d)(1) For the purpose of making payments pursuant to grants made under subsection (a), there are authorized to be appropriated \$60,000,000 for the fiscal year ending June 30, 1975, \$90,000,000 for the fiscal year ending June 30, 1976, \$125,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978,

\$150,000,000 for the fiscal year ending September 30, 1980, and \$165,000,000 for the fiscal year ending September 30, 1981.

[(2) Of the amount appropriated under paragraph (1) for any fiscal year, the Secretary may use not more than 5 per centum of such amount to increase the amount of grants in such fiscal year to health systems agencies under subsection (a) to assist the agencies in meeting extraordinary expenses (including extraordinary expenses resulting from an agency's health service area being located in more than one State or from an agency serving a large rural or urban medically underserved population or a geographically large health service area) which would not be covered under the amount of a grant that would be available to an agency under subsection (c) and in improving their performance as a result of the development and implementation of innovative health planning techniques.

[(3) Notwithstanding subsection (c), if the total of the amounts appropriated under paragraph (1) for any fiscal year (reduced by the amount to be retained by the Secretary for use under paragraph (2)) is less than the amount required to make grants to each health systems agency designated under section 1515(c) in the amount prescribed for such agency by subsection (c), the Secretary shall make a pro rata reduction in the amount of the grant to each such agency as follows:

[(A) The Secretary shall compute the amount of the grant each such agency would be entitled to receive under such subsection if the dollar limit prescribed by paragraph (1)(B) of such subsection did not apply.

[(B) The Secretary shall reduce on a pro rata basis the amount of the grant to each such agency computed under subparagraph (A) of this paragraph so that the total amount of such grants equals the total of the amounts appropriated for such fiscal year (as so reduced), except that—

[(i) the amount of the grant to any such agency may not exceed \$3,750,000,

[(ii) to the extent of available appropriations, no such agency shall receive a grant in an amount less than the amount prescribed by paragraph (3) of subsection (c) for such fiscal year, and

[(iii) if the total of the appropriations for the fiscal year ending September 30, 1982, for such grants—

[(I) is equal to or greater than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount less than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has decreased, unless the level of non-Federal funds on which its grant is computed had decreased, or unless the amount available for its grant is decreased because of an increase in the minimum grant prescribed by subsection (c)(3), or

[(II) is less than the total of the appropriations for such grants for the preceding fiscal year, no such agency shall receive a grant in an amount greater

than the amount of the grant it received in such preceding fiscal year unless the population of the area for which it is designated has increased, unless the level of non-Federal funds on which its grant is computed has increased, or unless the amount of its grant is increased under subsection (c)(3).

[PART C—STATE HEALTH PLANNING AND DEVELOPMENT

[DESIGNATION OF STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

[SEC. 1521. (a) For the purpose of the performance within each State of the health planning and development functions prescribed by section 1523, the Secretary shall enter into and renew agreements (described in subsection (b)) for the designation of a State health planning and development agency for each State.

[(b)(1) A designation agreement under subsection (a) is an agreement with the Governor of a State for the designation of an agency (selected by the Governor) of the government of that State as the State health planning and development agency (hereinafter in this title referred to as the "State Agency") to administer the State administrative program prescribed by section 1522 and to carry out the State's health planning and development functions prescribed by section 1523. The Secretary may not enter into such an agreement with the Governor of a State unless—

[(A) there has been submitted by the State a State administrative program which has been approved by the Secretary,

[(B) an application has been made to the Secretary for such an agreement and the application contains assurances satisfactory to the Secretary that the agency selected by the Governor for designation as the State Agency has the authority and resources to administer the State administrative program of the State and to carry out the health planning and development functions prescribed by section 1523, and

[(C) in the case of an agreement entered into under paragraph (3), there has been established for the State a Statewide Health Coordinating Council meeting the requirements of section 1524.

[(2)(A) The agreement entered into with a Governor of a State under subsection (a) may provide for the designation of a State Agency on a conditional basis with a view to determining the capacity of the designated State Agency to administer the State administrative program of the State and to carry out the health planning and development functions prescribed by section 1523. The Secretary shall require as a condition to the entering into of such an agreement that the Governor submit on behalf of the agency to be designated a plan for the agency's orderly assumption and implementation of such functions.

[(B) Any agreement with a Governor of a State entered into under subparagraph (A) may be terminated by the Governor upon ninety days' notice to the Secretary or by the Secretary upon ninety days' notice to the Governor if the Secretary determines, in

accordance with paragraph (3)(B), that the State Agency is not complying with the provisions of such agreement.

[(3)(A) If, on the basis of an application for designation as a State Agency (and, in the case of an agency conditionally designated under paragraph (2), on the basis of its performance under an agreement with a Governor of a State entered into under such paragraph), the Secretary determines that the agency is capable of fulfilling, in a satisfactory manner, the responsibilities of a State Agency, he shall enter into an agreement with the Governor of the State designating the agency as the State Agency for the State. No such agreement may be made unless an application therefor is submitted to, and approved by, the Secretary. Any such agreement shall be for a term of not to exceed thirty-six months, except that, prior to the expiration of such term, such agreement may be terminated—

[(i) by the Governor at such time and upon such notice to the Secretary as he may by regulation prescribe, or

[(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the designated State Agency is not complying with the provisions of such agreement.

An agreement under this paragraph shall contain such provisions as the Secretary may require to assure that the requirements of this part respecting State Agencies are complied with.

[(B) Before the Secretary may terminate an agreement with a designated State Agency under paragraph (2)(C) or subparagraph (A)(ii) of this paragraph, the Secretary shall—

[(i) consult with the Statewide Health Coordinating Council of the State for which the State Agency is designated respecting the proposed termination,

[(ii) give the State Agency notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the State Agency is not in compliance with the agreement, and (II) the actions that the State Agency should take to come into compliance with the agreement, and

[(iii) provide the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement under paragraph (2) or this paragraph to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the State Agency with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the State Agency an opportunity for a hearing on the matter specified in the notice.

[(4)(A) An agreement entered into under paragraph (3) for the designation of a State Agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon a review under section 1535 of the State Agency's operation and performance of its

function he determines that it has fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed and if the applicable State administrative program continues to meet the requirements of section 1522. Before renewing an agreement under this paragraph with a State Agency for a State, the Secretary shall provide each health systems agency designated for a health service area located (in whole or in part) in such State and the Statewide Health Coordinating Council of such State an opportunity to comment on the performance of the State Agency and to provide a recommendation on whether such agreement should be renewed.

[(B) If upon a review under section 1535 of the State Agency's operation and performance of its functions, the Secretary determines that it has not fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed or if the applicable State administrative program does not continue to meet the requirements of section 1522, he may terminate such agreement or return the State Agency to a conditionally designated status under paragraph (2) of subsection (b). The Secretary may not terminate an agreement or return a State Agency to a conditionally designated status unless the Secretary has—

[(i) provided the State Agency with notice of his intent to return it to a conditional status or terminate the agreement with it and included in that notice specification of any functions which the Secretary has determined the State Agency did not satisfactorily fulfill and of any requirements which the Secretary has determined it has not met;

[(ii) provided the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

[(iii) in the case of a proposed termination, consulted with the National Council on Health Planning and Development respecting the termination.

[(c) If a designation agreement with the Governor of a State entered into under subsection (b)(2) or (b)(3) is terminated before the date prescribed for its expiration, the Secretary shall, upon application and in accordance with subsection (b)(2) or (b)(3) (as the Secretary determines appropriate), enter into another agreement with the Governor for the designation of a State Agency.

[STATE ADMINISTRATIVE PROGRAM

[SEC. 1522. (a) A State administrative program (hereinafter in this section referred to as the "State Program") is a program for the performance within the State by its State Agency of the functions prescribed by section 1523. The Secretary may not approve a State Program for a State unless it—

[(1) meets the requirements of subsection (b);

[(2) has been submitted to the Secretary by the Governor of the State at such time and in such detail, and contains or is

accompanied by such information, as the Secretary deems necessary; and

[(3) has been submitted to the Secretary only after the Governor of the State has afforded to the general public of the State a reasonable opportunity for a presentation of views on the State Program.

[(b) The State Program of a State must—

[(1) provide for the performance within the State (after the designation of a State Agency and in accordance with the designation agreement) of the functions prescribed by section 1523 and specify the State Agency of the State as the sole agency for the performance of such functions (except as provided in subsection (b) of such section) and for the administration of the State Program;

[(2) contain or be supported by satisfactory evidence that the State Agency has under State law the authority to carry out such functions and the State Program in accordance with this part and contain a current budget for the operation of the State Agency;

[(3) provide for adequate consultation with, and authority for, the Statewide Health Coordinating Council (prescribed by section 1524), in carrying out such functions and the State Program;

[(4)(A) set forth in such detail as the Secretary may prescribe the qualifications for personnel having responsibilities in the performance of such functions and the State Program, and require the State Agency to have a professional staff for planning and a professional staff for development, which staffs shall be of such size and meet such qualifications as the Secretary may prescribe;

[(B) provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of such functions and the State Program, including methods relating to the establishment and maintenance of personnel standards on a merit basis consistent with such standards as are or may be established by the Civil Service Commission under section 208(a) of the Intergovernmental Personnel Act of 1970 (Public Law 91-648), but the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with the methods relating to personnel standards on a merit basis established and maintained in conformity with this paragraph;

[(5) require the State Agency to perform its functions in accordance with procedures and criteria established and published by it, which procedures and criteria shall conform to the requirements of section 1532 and contain provisions to assure compliance with requests for information made by health systems agencies in accordance with section 1513(h);

[(6) require the State Agency to (A) hold in public meetings to conduct the business of the State Agency (other than any part of a meeting in which it is likely, as determined by the State Agency, that information respecting the performance or remuneration of an employee of the agency will be disclosed

and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (B) give adequate notice to the public of such meetings, and (C) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public;

[(7)(A) provide for the coordination (in accordance with regulations of the secretary) with the cooperative system provided for under section 306(e) of the activities of the State Agency for the collection, retrieval, analysis, reporting, and publication of statistical and other information related to health and health care and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State, (B) require providers of health care doing business in the State to make statistical and other reports of such information to the State Agency, and (C) provide for consultation and coordination (in accordance with regulations of the Secretary) between the State Agency, the Statewide Health Coordinating Council, the State mental health authority, and other agencies of the State government designated by the Governor;

[(8) provide, in accordance with methods and procedures prescribed or approved by the Secretary, for the evaluation, at least annually, of the performance by the State Agency of its functions and of their economic effectiveness;

[(9) provide that the State Agency will from time to time, and in any event not less often than annually, review the State Program and submit to the Secretary required modifications;

[(10) require the State Agency to (A) assemble and report to the Secretary data (other than data which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this title) which the Secretary may require to carry out his responsibilities under section 1501(e), including data on the personnel, facilities, and other resources needed to meet the goals set forth in the State health plan, and (B) make such reports, in such form and containing such information, concerning its structure, operations, performance of functions, and other matters as the Secretary may from time to time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

[(11) require the State Agency to provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this title;

[(12) permit the Secretary and the Comptroller General of the United States, or their representatives, to have access for the purpose of audit and examination to any books, documents, papers, and records of the State Agency pertinent to the dispo-

sition of amounts received from the Secretary under this title; and

[(13) provide that if the State Agency makes a decision in the performance of a function under paragraph (4), (5), or (6) of section 1523(a) or under title XVI which is inconsistent with a recommendation made under subsection (f) or (g) of section 1513 by a health systems agency within the State—

[(A) such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed in a timely manner, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an agency of the State (other than the State health planning and development agency) designated by the Governor, and

[(B) the decision of the reviewing agency under subparagraph (A) shall for purposes of this title and title XVI be considered the decision of the State health planning and development agency.

[(c) The Secretary shall approve any State Program and any modification thereof which complies with subsections (a) and (b). The Secretary shall review for compliance with the requirements of this part the specifications of and operations under each State Program approved by him. Such review shall be conducted not less often than once every three years.

[STATE HEALTH PLANNING AND DEVELOPMENT FUNCTIONS

[SEC. 1523. (a) Each State Agency of a State designated under section 1521(b)(3) shall, except as authorized under subsection (b), perform within the State the following functions:

[(1)(A) Conduct the health planning activities of the State and implement those parts of the State health plan (except as provided under section 1524(c)(2)(E)) and the plans of the health systems agencies within the State which relate to the government of the State, and (B) determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting such needs by the State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor for the purpose of making such recommendations, and after consulting with the Statewide Health Coordinating Council.

[(2) Prepare, review at least triennially, and revise as necessary a preliminary State health plan which shall be made up of the HSP's of the health systems agencies within the State. In carrying out its functions under this paragraph, the State Agency shall refer the HSP's to the State health authority, the State mental health authority, and other agencies of the State government (designated by the Governor to make the review prescribed by this sentence) to review the goals and related resource requirements of the HSP's and to make written recommendations to the State Agency respecting such goals and requirements. Such preliminary plan may, as found necessary by

the State Agency, contain such revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide health needs determined under paragraph (1)(B). Such preliminary plan shall be submitted to the Statewide Health Coordinating Council of the State for approval or disapproval and for use in developing the State health plan referred to in section 1524(c).

[(3) Assist the Statewide Health Coordinating Council of the State in the performance of its functions generally.

[(4)(A) Serve as the designated planning agency of the State for the purposes of section 1122 of the Social Security Act if the State has made an agreement pursuant to such section, and (B) administer a State certificate of need program which applies to the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation. A certificate of need program shall provide for procedures and penalties to enforce the requirements of the program. The State Agency of a State may establish a system describing the extent to which and the manner in which health systems agencies may review applications for certificates of need. Under such system applications for certificates of need which are of the same or similar type shall be reviewed in the same manner. In performing its functions under this paragraph the State Agency shall consider recommendations made by health systems agencies under section 1513(f).

[(5) After consideration of recommendations submitted by health systems agencies under section 1513(f) respecting new institutional health services proposed to be offered within the State, make findings as to the need for such services.

[(6) Review, to the extent feasible and on a periodic basis (but not less often than every five years) at least those institutional and home health services which are offered in the State and with respect to which goals have been established in the State health plan and, after consideration of recommendations submitted by health systems agencies under section 1513(g) respecting the appropriateness of such services, make public its findings. In making the appropriateness review required by this paragraph of a health service, the State Agency shall at least consider the need for the service, its accessibility and availability, financial viability, cost effectiveness, and the quality of service provided.

[(7) Prepare an inventory of the health care facilities (other than Federal health care facilities) located in the State and evaluate on an ongoing basis the physical condition of such facilities. Such inventory and evaluations shall be reported to the health systems agencies designated for health service areas located (in whole or in part) in the State for purposes of the functions of the agency under section 1513(b).

[(8) Provide technical assistance to individuals and public and private entities in obtaining and filling out the necessary forms for the development of projects and programs.

If in determining the statewide health needs under paragraph (1)(B) or in preparing or revising a preliminary State health plan under paragraph (2) the State Agency does not take an action proposed in a recommendation submitted under the applicable paragraph, the State Agency shall when publishing such needs or health plan make available to the public a written statement of its reasons for not taking such action.

[(b)(1) Any function described in subsection (a) may be performed by another agency of the State government upon request of the Governor under an agreement with the State Agency satisfactory to the Secretary.

[(2) The requirement of paragraph (4)(B) of subsection (a) shall not apply to a State Agency of a State until the expiration of the first regular session of the legislature of such State which begins after the date of enactment of this title.

[(3) A State Agency shall complete its findings with respect to the appropriateness of any existing institutional health service within one year after the date a health systems agency has made its recommendation under section 1513(g) with respect to the appropriateness of the service.

[(c) If a State Agency makes a decision in carrying out a function described in paragraph (4), (5), or (6) of subsection (a) which is not consistent with the goals of the applicable HSP or the priorities of the applicable AIP, the State Agency shall submit to the appropriate health systems agency a detailed statement of the reasons for the inconsistency.

[STATEWIDE HEALTH COORDINATING COUNCIL

[SEC. 1524. (a) State health planning and development agency designated under section 1521 shall be advised by a Statewide Health Coordinating Council (hereinafter in this section referred to as the "SHCC") which (1) is organized in the manner described by subsection (b), and (2) performs the functions listed in subsection (c).

[(b)(1) A SHCC of a State shall be composed in the following manner:

[(A)(i) A SHCC shall have no fewer than sixteen representatives (or if the number of representatives on the SHCC to which health systems agencies are entitled under the second sentence of clause (iii) is less than sixteen, no fewer than the number to which they are entitled) appointed by the Governor of the State from lists of nominees submitted to the Governor by each of the health systems agencies designated for health service areas which fall, in whole or in part, within the State. Each agency shall submit a number of nominees to the Governor which is at least twice the number of representatives on the SHCC to which the agency is entitled.

[(ii) Each such health systems agency shall be entitled to the same number of representatives on the SHCC, except that the number of representatives on the SHCC to which a health systems agency designated for a health service area which is not entirely within the State shall be a number which is based on the relationship of the population of the portion of such

health service area within the State to the population of the largest health service area located entirely within the State, except that each such agency shall be entitled to at least one representative on the SHCC.

[(iii) Except as otherwise provided in clause (ii) and this clause, each such health systems agency shall be entitled to at least two representatives on the SHCC. If there are more than ten health systems agencies within a State, each health systems agency within such State shall be entitled to at least one representative on the SHCC. Of the representatives of health systems agencies on the SHCC, not less than one-half shall be individuals who are consumers of health care and who are not providers of health care.

[(B) In addition to the appointments made under subparagraph (A), the Governor of the State may appoint such persons (including State officials, public elected officials, and other representatives of governmental authorities within the State) to serve on the SHCC as he deems appropriate; except that (i) the number of persons appointed to the SHCC under this subparagraph may not exceed 40 per centum of the total membership of the SHCC, and (ii) a majority of the persons appointed by the Governor shall be consumers of health care who are not also providers of health care.

[(C) Not less than one-half of the providers of health care who are members of a SHCC shall be direct providers of health care (as described in section 1531(3)).

[(D) Where one or more hospitals or other health care facilities of the Veterans' Administration are located in a State, the SHCC shall, in addition to the appointed members, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated as a representative of such facilities.

[(E) Members of the SHCC who are consumers of health care and who are not providers of health care shall include individuals who represent rural and urban medically underserved populations if such populations exist in the State.

[(2) The Governor may select, by and with the advice and consent of the State senate, or, in the case of a State with a unicameral legislature, of the State legislature, the chairman of the SHCC from among the members of the SHCC. If the Governor does not select the chairman, the SHCC shall select the chairman from among its members.

[(3) The SHCC shall conduct all of its business meetings in public, and shall meet at least once in each calendar quarter of a year.

[(c) A SHCC shall perform the following functions:

[(1) Establish (in consultation with the health systems agencies in the State and the State Agency) a uniform format for HSP's and review and coordinate at least triennially the HSP and review at least annually the AIP of each health systems agency within the State and report to the Secretary, for purposes of his review under section 1535(c), its comments on such HSP and AIP.

[(2)(A) Prepare, review at least triennially, and revise as necessary a State health plan which shall be made up of the HSP's of the health systems agencies within the State. Such plan may, as found necessary by the SHCC, contain revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide health needs as determined by the State Agency of the State. The plan shall also describe the institutional health services (as defined in section 1531(5)) needed to provide for the well-being of persons receiving care within the State, including, at a minimum, acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and also describe other health services needed to provide for the well-being of persons receiving care within the State, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the plan and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Each health systems agency which participates in the SHCC shall make available to the SHCC its HSP for integration into the State health plan and shall, as required by the SHCC, revise its HSP to achieve appropriate coordination with the HSP's of the other agencies which participate in the SHCC or to deal more effectively with statewide health needs as determined by the State Agency of the State.

[(B) In the preparation and revision of the State health plan, the SHCC shall review and consider the preliminary State health plan submitted by the State Agency under section 1523(a)(2), and shall conduct a public hearing on the plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to any such hearing, the SHCC shall publish in at least two newspapers of general circulation in the State a notice of its consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan in advance of the hearing, and the place and period during which to direct written comment to the SHCC on the plan. If in preparing or revising the State health plan the SHCC does not take an action proposed in a recommendation submitted under section 1523(a)(1)(B), the SHCC shall when publishing such plan make available to the public a written statement of its reasons for not taking such action.

[(C) The State health plan or any revised State health plan approved by the SHCC shall be the State health plan for the State for purposes of this title after it is approved by the Governor of the State. The State health plan for a State may be disapproved by the Governor of the State only if the Governor determines that the plan does not effectively meet the statewide health needs of the State as determined by the State Agency for the State. In disapproving a State health plan, a

Governor shall make public a detailed statement of the basis for the determination that the plan does not meet such needs and shall specify the changes in the plan which the Governor determines are needed to meet such needs. Subparagraph (B) does not apply to the preparation of revisions of a State health plan disapproved by a Governor.

[(D) In carrying out its functions with respect to the goals and resource requirements for mental health services of the State health plan, the SHCC may establish a procedure under which persons (acting as or as part of an advisory group or subcommittee appointed by the SHCC) knowledgeable about mental health services (including services for alcohol and drug abuse) will have the opportunity to make recommendations to the SHCC respecting such services.

[(E) The State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor, shall carry out those parts of the State health plan which relate to the government of the State.

[(F) If a State health plan as required by this subsection is not in effect for a State, the Secretary may not make any grant under section 1525 to the State Agency designated for such State under section 1521(b)(3).

[(3) Review annually the budget of each such health systems agency and report to the Secretary, for purposes of his review under section 1535(a), its comments on such budget.

[(4) Review applications submitted by such health systems agencies for grants under sections 1516 and 1640 and report to the Secretary its comments on such applications.

[(5) Advise the State Agency of the State generally on the performance of its functions.

[(6) Review annually and recommend approval or disapproval of (A) any State plan and any application (and any revision of a State plan or application) submitted to the Secretary as a condition to the receipt of any funds under allotments made to States under this Act, and (B) any application (and any revision of an application) submitted to the Secretary by a State for a grant or contract under any provision of law referred to in clause (A) for projects in more than one health service area of the State. Notwithstanding any other provision of this Act or any other Act referred to in the preceding sentence, the Secretary shall allow a SHCC sixty days to make the review required by such sentence. If a SHCC recommends disapproval of such a plan or application, the Secretary, after making a finding that such plan or application is not in conformity with the State health plan, may not make Federal funds available under such State plan or application. If the Secretary makes such a funding, he shall notify the Governor of his finding and the reasons therefor and advise him that he has thirty days in which to submit a revised State plan or application that conforms with the State health plan. If after reviewing a recommendation of a SHCC to disapprove such State plan or application, the Secretary decides to make such funds available, the decision by the Secretary to make such funds available shall be

submitted to the SHCC and shall contain a detailed statement of the reasons for the decision.

[(d) No individual who as a member or employee of a SHCC shall, by reason of his performance of any duty, function, or activity required of, or authorized to be undertaken by, the SHCC, be liable for payment of damages under any law of the United States or any State (or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member of employee, and acted, with respect to that performance, without gross negligence or malice toward any person affected by it.

[(e) No member of any SHCC may, in the exercise of any function of the SHCC described in subsection (c)(6), vote on any matter before the SHCC respecting any individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. Each SHCC shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the SHCC to make a written disclosure of such relationship before any action is taken by the SHCC with respect to such matter in the exercise of any function under subsection (c) and to make such relationship public in any meeting in which such action is to be taken.

[GRANTS FOR STATE HEALTH PLANNING AND DEVELOPMENT

[SEC. 1525. (a) The Secretary shall make grants to State health planning and development agencies designated under subsection (b)(2) and (b)(3) of section 1521 to assist them in meeting the costs of their operation. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grants to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency. The amount of any grant made under this subsection shall be determined by the Secretary, except that no grant to a designated State Agency may exceed 75 per centum of its operation costs (as determined under regulations of the Secretary) during the period for which the grant is available for obligation.

[(b) Grants under subsection (a) shall be made on such terms and conditions as the Secretary may prescribe; except that the Secretary may not make a grant to a State Agency unless the receives satisfactory assurances that the State Agency will expend in performing the functions prescribed by section 1523 during the fiscal year for which the grant is sought an amount of funds from non-Federal sources which is at least as great as the average amount of funds expended, in the three years immediately preceding the fiscal year of which such grant is sought, by the State, for which such State Agency has been designated, for the purposes for which funds under such grant may be used (excluding expenditures of a nonrecurring nature).

[(c) For the purpose of making payments under grants under subsection (a), there are authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1975, \$30,000,000 for the fiscal year ending June 30, 1976, \$35,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, \$35,000,000 for the fiscal year ending September 30, 1980, and \$40,000,000 for the fiscal year ending September 30, 1981.

[GRANTS FOR RATE REGULATION

[SEC. 1526. (a) For the purpose of demonstrating the effectiveness of the State Agencies regulating rates for the provision of health care, the Secretary may make grants to a State Agency designated, under an agreement entered into under section 1521(b)(3), for a State which (in accordance with regulations prescribed by the Secretary has indicated an intent to regulate rates for the provision of health care within the State or to any other entity of the government of a State which has so indicated an intent to regulate such rates.

[(b)(1) An entity which receives a grant under subsection (a) shall—

[(A) provide the Secretary satisfactory evidence that the entity has under State law the authority to carry out rate regulation functions in accordance with the section and provide the Secretary a current budget for the performance of such functions by it;

[(B) set forth in such detail as the Secretary may prescribe the qualifications for personnel having responsibility in the performance of such functions, and shall have a professional staff for rate regulation, which staff shall be headed by a Director;

[(C) provide for such methods of administration a found by the Secretary to be necessary for the proper and efficient administration of such functions;

[(D) if it is a State Agency, perform its functions in accordance with procedures established and published by it, which procedures shall conform to the requirements of section 1532;

[(E) if it is a State Agency, comply with the requirements prescribed by paragraphs (6) through (12) of section 1522(b) with respect to the functions prescribed by subsection (a);

[(F) provide for the establishment of a procedure under which the entity will obtain the recommendation of the appropriate health systems agency prior to conducting a review of the rates charged or proposed to be charged for services; and

[(G) meet such other requirements as the Secretary may prescribe.

If an entity which is not a State Agency receives a grant under subsection (a), such entity shall coordinate its activities under the grant with the State Agency for the State in which such entity is located, share with the State Agency data obtained from such activities, and for purposes of such activities, develop with the State Agency criteria for the review of institutional health services, equipment, and facilities which guidelines are not in conflict with criteria adopted by the State Agency.

[(2) In prescribing requirements under paragraph (1) of this subsection, the Secretary shall consider the manner in which an entity shall perform its functions under a grant under subsection (a), including whether the entity should—

[(A) permit those engaged in the delivery of health services to retain savings accruing to them from effective management and cost control,

[(B) create incentives at each point in the delivery of health services for utilization of the most economical modes of services feasible,

[(C) document the need for and cost implications of each new service for which a determination of reimbursement rates is sought, and

[(D) employ for each type or class of person engaged in the delivery of health services—

[(i) a unit for determining the reimbursement rates, and

[(ii) a base for determining rates of change in the reimbursement rates,

which unit and base are satisfactory to the Secretary.

[(c) Grants under subsection (a) shall be made on such terms and conditions as the Secretary may prescribe, except that no entity may receive more than three grants under subsection (a). Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency.

[(d) Each entity which receives a grant under subsection (a) shall report to the Secretary (in such form and manner as he shall prescribe) on the effectiveness of the rate regulation program assisted by such grant. The Secretary shall report annually to the Congress on the effectiveness of the programs assisted by the grants authorized by subsection (a).

[(e) There are authorized to be appropriated to make payments under grants under subsection (a), \$4,000,000 for the fiscal year ending June 30, 1975, \$5,000,000 for the fiscal year ending June 30, 1976, \$6,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, \$6,000,000 for the fiscal year ending September 30, 1980, \$6,000,000 for the fiscal year ending September 30, 1981, and \$6,000,000 for fiscal year ending September 30, 1982.

[CERTIFICATE OF NEED PROGRAM

[SEC. 1527. (a) The certificate of need program required by section 1523(a) 4 (B) shall, in accordance with this section, provide for the following:

[(1) Review and determination of need under such program for—

[(A) major medical equipment and institutional health services, and

[(B) capital expenditures,
shall be made before the time such equipment is acquired, such services are offered, substantial expenditures are under-

taken in preparation for such offering, or capital expenditures are obligated.

[(2) The acquisition and offering of only such equipment and services as may be found by the State Agency to be needed; and the obligation of only those capital expenditures found to be needed by the State Agency. Except as otherwise authorized by this section, review under the program of an application for a certificate of need may not be made subject to any criterion and the issuance of a certificate of need may not be made subject to any condition unless the criterion or condition directly relates to—

[(A) criteria prescribed by section 1532(c),

[(B) criteria prescribed by regulations of the Secretary promulgated under section 1532(a) before the date of the enactment of the Health Planning and Resources Development Amendments of 1979, or

[(C) criteria prescribed by regulation by the State Agency in accordance with an authorization prescribed by State law.

The Secretary may not require a State to include in its program any criterion in addition to criteria described in subparagraphs (A) and (B).

[(3) An application for a certificate of need for an institutional health service, medical equipment, or a capital expenditure shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application for the certificate. If on the basis of such a review the State Agency determines that the holder of a certificate is not meeting such timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the health systems agency which received a report from the State Agency on such review, withdraw the certificate.

[(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

[(5) The program shall provide that (A) the requirements of section 1532 shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the State Agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State health plan in effect for such State under section 1524(c).

[(b)(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

[(A) a health maintenance organization or a combination of health maintenance organizations if (i) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (ii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

[(B) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iv) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination, or

[(C) a health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations and on the date of the application is submitted under paragraph (2) at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to individuals enrolled in such organization or organizations, and (iii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization,

if, with respect to such offering, acquisition, or obligation, the State Agency has, upon application under paragraph (2), granted an exemption from such requirement to the organization, combination of organizations, or facility.

[(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under paragraph (1) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

[(A) it has submitted, at such time and in such form and manner as the State Agency shall prescribe, an application for such exemption.

[(B) the application contains such information respecting the organization, combination, or facility and the proposed offering acquisition, or obligation as the State Agency may require to determine if the organization or combination meets

the requirements of paragraph (1) of the facility meets or will meet such requirements, and

[(C) the State Agency approves such application.

In the case of a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date an application is submitted under this paragraph with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of paragraph (1) when the facility first provides such services. The State Agency shall approve an application submitted under this paragraph if it determines that the applicable requirements of paragraph (1) are met.

[(3) Notwithstanding subsection (d), a health care facility (or any part thereof) or medial equipment with respect to which an exemption was granted under paragraph (1) may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C) of paragraph (1) which was granted an exemption under paragraph (1) may not be used by any person other than the lessee described in such subparagraph unless—

[(A) the State Agency issues a certificate of need approving the sale, lease, acquisition, or use, or

[(B) the State Agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or use the facility is (i) a health maintenance organization or a combination of health maintenance organizations which meets the requirements of clause (i) of subparagraph (A) of paragraph (1) and with respect to such facility or equipment, the entity meets the requirements of clauses (ii) and (iii) of such subparagraph (A), or (ii) a health care facility which meets the requirements of clauses (i), (ii), and (iii) of subparagraph (B) of paragraph (1) and with respect to its patients meets the requirements of clause (iv) of such subparagraph.

[(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, a State may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under paragraph (1).

[(5) Notwithstanding section 1532(c), if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization apply for a certificate of need, such application shall be approved by the State Agency if the State Agency finds (in accordance with criteria prescribed by the Secretary by regulation) that—

[(A) approval of such application is required to meet the needs of the members of the health maintenance organization

and of the new members which such organization can reasonably be expected to enroll, and

[(B) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Except as provided in paragraph (1) and notwithstanding subsection (d), a health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the State Agency issues a certificate of need approving the sale, acquisition, or lease.

[(c) Notwithstanding section 1532(c), an application for a certificate of need for a capital expenditure which is required—

[(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations,

[(2) to comply with State licensure standards, or

[(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under title XIX of such Act, shall be approved unless the State Agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State health plan in effect under section 1524. An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) and (3).

[(d)(1) Under the program a certificate of need shall, except as provided in subsection (b), be required for the obligation of a capital expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing health care facility if—

[(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

[(B) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the services or bed capacity of the facility will be changed in being acquired.

[(2) Before any person enters into a contractual arrangement to acquire an existing health care facility which arrangement will require the obligation of a capital expenditure, such person shall notify the State Agency of the State in which such facility is located of such person's intent to acquire such facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days

before contractual arrangements are entered into to acquire the facility with respect to which the notice is given.

[(e)(1)(A) Except as provided in subsection (b) and subparagraph (B), under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

[(i) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

[(ii) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

[(B) The certificate of need program of a State may include a requirement for a certificate of need for an acquisition of major medical equipment which requirement is in addition to the requirement for a certificate of need established by subparagraph (A), except that after September 30, 1982, the certificate of need program of a State may not be changed to include any such additional requirement.

[(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the State Agency of the State in which such equipment will be located of such person's intent to acquire such equipment and of the use that will be made of the equipment. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

[(3) For purposes of this subsection, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of it for less than fair market value shall be considered an acquisition of major medical equipment if its fair market value is at least \$150,000.

[(f) Notwithstanding section 1532(c), when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training program for doctors of osteopathy and medicine at the student, internship, and residency training levels.

[(g) In approving or disapproving applications for certificates of need or in withdrawing certificates of need under such a program, a State Agency shall take into account recommendations made by health systems agencies within the State under section 1513(f).

[(h)(1) Subsection (a) does not require a certificate of need program to require a health care facility to obtain a certificate of need for the acquisition of major medical equipment to be used solely for

research, institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the acquisition, offering, or obligation does not—

[(A) affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

[(B) substantially change the bed capacity of the facility; or

[(C) substantially change the medical or other patient care services of the facility which were offered before the acquisition offering or obligation.

[(2)(A) Before a health care facility acquires major medical equipment to be used solely for research, offers an institutional health service solely for research, or obligates a capital expenditure solely for research, such health care facility shall notify in writing the State Agency of the State in which such facility is located of such facility's intent and the use to be made of such medical equipment, institutional health service, or capital expenditure.

[(B) Paragraph (1) does not apply with respect to the acquisition of major medical equipment, the offering of institutional health services or the obligation of a capital expenditure if—

[(i) the notice required by subparagraph (A) is not filed with the State Agency with respect to such acquisition, offering, or obligation, or

[(ii) the State Agency finds, within 60 days after the date it receives a notice in accordance with subparagraph (A) respecting the acquisition, offering, or obligation, that the acquisition, offering or obligation will have the effect or make a change described in subparagraph (A), (B), or (C) of paragraph (1).

[(3) If major medical equipment is acquired, an institutional health service is offered, or a capital expenditure is obligated and a certificate of need is not required for such acquisition, offering, or obligation as provided in paragraph (1), such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraph (A), (B), or (C) of paragraph (1) unless the State Agency issues a certificate of need approving such use.

[(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

[(PART D—GENERAL PROVISIONS

[(DEFINITIONS

[(SEC. 1531. Except as otherwise provided, for purposes of this title:

[(1) The term "State" includes the District of Columbia.

[(2) The term "Governor" means the chief executive officer of a State or his designee.

[(3) The term "provider of health care" means an individual—

[(A) who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assist-

ant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

[(B) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in clause (ii) or (iv) of subparagraph (C) other than an entity described in such clause which is also an entity described in section 501(c)(3) of the Internal Revenue Code of 1954 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles described in clause (iii) of subparagraph (C);

[(C) who receives (either directly or through the individual's spouse) more than one-fifth of his gross annual income from any one or combination of—

[(i) fees or other compensation for research into or instruction in the provision of health care,

[(ii) entities engaged in the provision of health care or in research or instruction in the provision of health care,

[(iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or

[(iv) entities in producing drugs or such other articles; or

[(D) who is the member of the immediate family of an individual described in subparagraph (A), (B), or (C).

Notwithstanding subparagraph (B), an individual shall not be considered a provider of health care solely because the individual is the member of the governing board of one or more entities described in clause (ii) or (iv) of subparagraph (C).

[(4) The term "health resources" includes health service, health professions personnel, and health facilities, except that such term does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

[(5) The term "institutional health services" means health services which (A) are provided through private and public hospitals, rehabilitation, facilities, nursing homes, and other health care facilities, as defined by the Secretary by regulation, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means \$500,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, \$500,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted

to reflect the change in the preceding twelve-month period in an index designated by the Secretary by regulation for purposes of making such adjustment.

[(6) For purpose of sections 1523 and 1527, the term "capital expenditure" means an expenditure—

[(A) made by or on behalf of a health care facility (as such a facility is defined in regulations prescribed under paragraph (5)); and

[(B)(i) which (I) under generally accepting accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

[(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under sections 1523 and 1527 shall be considered capital expenditures for purposes of sections 1523 and 1527, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 1527. For purposes of this paragraph, the term "expenditure minimum" means \$1,000,000 for the twelve-month period beginning with the month in which this paragraph is enacted and for each twelve-month period thereafter, \$1,000,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

[(7) For purposes of sections 1523 and 1527, the term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of \$500,000, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(a) of such Act. In determining \$500,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included.

[(8) The term "health maintenance organizations" means a public or private organization, organized under the laws of any State, which—

- [(A) is a qualified health maintenance organization under section 1310(d); or

[(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

[(9) For purposes of paragraph (5) of this section and sections 1523(a)(4)(B) and 1527, the term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision. For purposes of the remaining provisions of this title, the term "rehabilitation facility" means an inpatient facility described in the preceding sentence and, in addition, an outpatient facility which is operated as described in such sentence.

[(10) The term "medically underserved population" has the same meaning as such term has under section 330(b)(3).

[(11) Any reference to the term "health" includes physical and mental health.

[(12) The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

[PROCEDURES AND CRITERIA FOR REVIEWS OF PROPOSED HEALTH SYSTEM CHANGES

[SEC. 1532. (a) In conducting reviews pursuant to subsections (e), (f), and (g) of section 1513 or in conducting any other reviews of proposed or existing health services, each health systems agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the agency in accordance with regulations of the Secretary; in performing its review functions under section 1523, a State Agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary; and in performing its review functions a Statewide Health Coordinating Council shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the Council in accordance with regulations of the Secretary. Procedures and criteria for reviews by health systems agencies, State Agencies, and Statewide Health Coordinating Councils may vary according to the pur-

pose for which a particular review is being conducted or the type of health services being reviewed. Health systems agencies, the State Agency, and, if appropriate, the Statewide Health Coordinating Council within each State shall cooperate in the development of procedures and criteria under this subsection to the extent appropriate to the achievement of efficiency in their reviews and consistency in criteria for such reviews. The Secretary shall review at least annually regulations promulgated under this section and provide opportunity for the submission of comments by health systems agencies, State Agencies, and Statewide Health Coordinating Councils on the need for the revision of such regulations. At least forty-five days before the initial publication of a regulation proposing a revision in a regulation of the Secretary under this section, the Secretary shall, with respect to such proposed revision, consult with and solicit the recommendations from health systems agencies, State Agencies, and Statewide Health Coordinating Councils.

[(b) Each health systems agency, State Agency, and Statewide Health Coordinating Council shall include in the procedures required by subsection (a) least the following:

[(1) Timely written notification to affected persons of the beginning of a review and, if a person has asked the entity conducting the review to place the person's name on a mailing list maintained by the entity, such notification shall be sent to such person.

[(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than ninety days from the date the notification described in paragraph (1) is made, or in the case of non-substantive reviews, provision for a shortened review period. If, after a review has begun, a State Agency, health systems agency, or Statewide Health Coordinating Council requires, in accordance with paragraph (3), the person subject to the review to submit information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information.

[(3) Provision for persons subject to a review to submit to the agency, State Agency, or Statewide Health Coordinating Council (in such form and manner as the agency or State Agency shall prescribe and publish) such information as the agency or State Agency may require concerning the subject of such review. Each health systems agency, State Agency, and Statewide Health Coordinating Council shall develop procedures to assure that requests for information in connection with a review under this title are limited to only that information which is necessary for the agency, State Agency, or Statewide Health Coordinating Council to perform the review.

[(4) Submission of applications (subject to review by a health systems agency, State Agency, or Statewide Health Coordinating Council) made under this Act or other provisions of law for Federal financial assistance for health services to the health systems agency, State Agency, Statewide Health Coordinating Council at such time and in such manner as it may require.

[(5) Submission of periodic reports by providers of health services and other persons subject to agency, State, Agency, or

Statewide Health Coordinating Council review respecting the development of proposals subject to review.

[(6) Provision for written findings which state the basis for any final decision or recommendation made by the agency, State Agency, or Statewide Health Coordinating Council.

[(7) Timely notification of providers of health services and other persons subject to agency, State Agency, or Statewide Health Coordinating Council review of the status of the agency, State Agency, or Statewide Health Coordinating Council review of the health services or proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

[(8) Provision for public hearings in the course of agency, State Agency, or Statewide Health Coordinating Council review if requested by persons directly affected by the review; and provision for public hearings, for good cause shown, respecting agency, State Agency decisions, and Statewide Health Coordinating Council.

[(9) Preparation and publication or regular reports by the agency, State Agency, and Statewide Health Coordinating Council of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency, State Agency, and Statewide Health Coordinating Council (including a general statement of the findings and decisions made in the course of such reviews) since the publication of the last such report.

[(10) Access by the general public to all applications reviewed by the agency, State Agency, and Statewide Health Coordinating Council and to all other written materials essential to any agency, State Agency, or Statewide Health Coordinating Council review.

[(11) In the case of construction projects, submission to the agency and State Agency by the entities proposing the projects of letters of intent in such details as may be necessary to inform the agency and State Agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

[(12) The following procedural requirements with respect to proceedings under a certificate of need program:

[(A) Hearings under a certificate of need program shall be held before a State Agency or a health systems agency to which the State Agency has delegated the authority to hold such a hearing. In a hearing under the program, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter, and a record of the hearing shall be maintained. The requirements of this subparagraph do not apply to hearings held by a health systems agency in the performance of a review under section 1513(f).

[(B) Any decision of a State Agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the State Agency conducted in accordance with procedures and criteria it has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the Agency's proposal to withdraw the certificate, as the case may be. Any decision of a State Agency to approve or disapprove an application for an exemption under section 1527(b) shall be based solely on the record established in the administrative proceedings held with respect to the application.

[(C)(i) The State Agency shall establish the period within which approval or disapproval by the State Agency of applications for certificates of need and for exemptions under section 1527(b) shall be made. If, after review has begun by the State Agency, the State Agency or health systems agency requires, in accordance with section 1532(b)(3), an applicant to submit information respecting the subject of the review, the period prescribed pursuant to the preceding sentence, shall, at the request of the applicant, be extended fifteen days.

[(ii) If the State Agency fails to approve or disapprove an application within the applicable period under clause (i), the applicant may, within a reasonable period of time following the expiration of such period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application.

[(D) The program shall provide that each decision of the State Agency to issue, not to issue, or to withdraw a certificate of need or to approve or disapprove an application for an exemption under section 1527(b) shall, upon request of any person directly affected by such decision, be reviewed under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

[(E) Any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption under section 1527(b) and a health systems agency if the decision respecting the certificate of need is inconsistent with a recommendation made by the agency to the State Agency with respect to the certificate of need may, within a reasonable period of time after such decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court. The decision of the State Agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

[(F) There shall be no ex parte contacts—

[(i) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the State Agency who exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect for it; and

[(ii) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the State Agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the Agency's proposal to withdraw the certificate of need and before a decision is made on withdrawal.

The requirements of this paragraph are in addition to the requirements of the other paragraphs of this subsection and may, as appropriate, apply to other review programs.

[(13)(A) In the case of reviews by health systems agencies under section 1513(f) and by State Agencies under paragraphs (4) and (5) of section 1523(a)—

[(i) provision for applications to be submitted in accordance with a timetable established by the reviewing agency,

[(ii) provision for such reviews to be undertaken in a timely fashion, and

[(iii) provision for all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other (but no less often than twice a year).

[(B) In the case of reviews by health systems agencies under section 1513(g) and by State Agencies under paragraph (6) of section 1523(a), provision for reviews of similar types of institutional health services affecting the same health service area to be considered in relation to each other.

[(c) Criteria required by subsection (a) for health systems agency, State Agency, and Statewide Health Coordinating Council review shall include consideration of at least the following:

[(1) The relationship of the health services being reviewed to the applicable HSP, AIP, and State health plan.

[(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

[(3) The need that the population served or to be served by such services has for such services.

[(4) The availability of alternatives, less costly, or more effective methods of providing such services.

[(5) The relationship of services reviewed to the existing health care system of the area in which such services are provided or proposed to be provided.

[(6) In the case of health services proposed to be provided—

[(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services,

[(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided,

[(C) if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes,

[(D) the availability of alternative uses of such resources for the provision of other health services, and

[(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.

[(7) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, specialty centers and such other entities as the Secretary may be regulation prescribe.

[(8) The special needs and circumstances of health maintenance organizations.

[(9) In the case of a construction project—

[(A) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

[(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project and on the costs and charges to the public of providing health services by other persons.

[(10) The special circumstances of health service institutions and the need for conserving energy.

[(11) In accordance with section 1502(b), the factors which affect the effect of competition on the supply of the health services being reviewed.

[(12) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b), and serve to promote quality assurance and cost effectiveness.

[(13) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

[(14) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

The criteria established by any health systems agency, State Agency, or Statewide Health Coordinating Council under paragraph (8) shall be consistent with the standards and procedures established by the Secretary under section 1306(c) of this Act.

【TECHNICAL ASSISTANCE FOR HEALTH SYSTEMS AGENCIES AND STATE
HEALTH PLANNING AND DEVELOPMENT AGENCIES

【SEC. 1533. (a) The Secretary shall provide (directly or through grants or contracts, or both) to designated health systems agencies and State Agencies (1) assistance in developing their health plans and approaches to planning various types of health services, (2) technical materials, including methodologies, policies, and standards appropriate for use in health planning, and (3) other technical assistance as may be necessary in order that such agencies may properly perform their functions.

【(b) The Secretary shall include in the materials provided under subsection (a) the following:

【(1)(A) Specification of the minimum data needed to determine the health status of the residents of a health service area and the determinants of such status.

【(B) Specification of the minimum data needed to determine the status of the health resources and services of a health service area.

【(C) Specification of the minimum data needed to describe the use of health resources and services within a health service area.

【(2) Planning approaches, methodologies, policies, and standards which shall be consistent with the guidelines established by the Secretary under section 1501 for appropriate planning and development of health resources, and which shall cover the priorities listed in section 1502.

【(3) Guidelines for the organization and operation of health systems agencies and State Agencies including guidelines for—

【(A) the structure of a health systems agency, consistent with section 1512(b), and of a State Agency, consistent with section 1522;

【(B) the conduct of the planning and development processes;

【(C) the performance of health systems agency functions in accordance with section 1513; and

【(D) the performance of State Agency functions in accordance with section 1523.

【(c) In order to facilitate the exchange of information concerning health services, health resources, and health planning and resources development practice and methodology, the Secretary shall establish a national health planning information center to support the health planning and resources development programs of health systems agencies, State agencies, and other entities concerned with health planning and resources development; to provide access to current information or health planning and resources development; and to provide information for use in the analysis of issues and problems related to health planning and resources development.

【(d) The Secretary shall establish the following within one year of the date of enactment of this title:

【(1) A uniform system for calculating the aggregate cost of operation and the aggregate volume of services provided by health services institutions as defined by the Secretary in regu-

lations. Such system shall provide for the calculation of the aggregate volume to be based on:

- [(A) the number of patient days;
- [(B) the number of patient admissions;
- [(C) the number of out-patient visits; and
- [(D) other relevant factors as determined by the Secretary.

[(2) A uniform system for cost accounting and calculating the volume of services provided by health services institutions. Such system shall:

[(A) Include the establishment of specific cost centers and, where appropriate, subcost centers.

[(B) Include the designation of an appropriate volume factor for each cost center.

[(C) Provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health services institutions), and different sizes of such types of institutions.

[(3) A uniform system for calculating rates to be charged to health insurers and other health institutions payors by health service institutions. Such system shall:

[(A) Be based on an all-inclusive rate for various categories of patients (including, but not limited to individuals receiving medical, surgical, pediatric, obstetric, and psychiatric institutional health services).

[(B) Provide that such rates reflect the true cost of providing services to each such category of patients. The system shall provide that revenues derived from patients in one category shall not be used to support the provision of services to patients in any other category.

[(C) Provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health service institutions) and different sizes of such types of institutions.

[(D) Provide that differences in rates to various classes of purchasers (including health insurers, direct service payors, and other health institution payors) be based on justified and documented differences in the costs of operation of health services institutions made possible by the actions of such purchasers.

[(4) A classification system for health services institutions. Such classification system shall quantitatively describe and group health services institutions of the various types. Factors included in such classification system shall include—

[(A) the number of beds operated by an institution;

[(B) the geographic location of an institution;

[(C) the operation of a postgraduate physician training program by an institution; and

[(D) the complexity of services provided by an institution.

[(5) A uniform system for the reporting by health services institutions of—

[(A) the aggregate cost of operation and the aggregate volume of services, as calculated in accordance with the system established by the Secretary under paragraph (1);

[(B) the costs and volume of services at various cost centers, and subcost centers, as calculated in accordance with the system established by the Secretary under paragraph (2); and

[(C) rates, by category of patient and class of purchaser, as calculated in accordance with the system established by the Secretary under paragraph (3).

Such system shall provide for an appropriate application of such system in the different types of institutions (including hospitals, nursing homes, and other types of health services institutions) and different sizes of such institutions.

[(CENTERS FOR HEALTH PLANNING

[SEC. 1534. (a) For the purposes of assisting the Secretary in carrying out this title, providing such technical and consulting assistance as health systems agencies and State Agencies may from time to time require, conducting research, studies and analyses of health planning and resources development, and developing health planning approaches, methodologies, policies, and standards, the Secretary shall be grants or contracts, or both, assist public or private nonprofit entities in meeting the costs of planning and developing new centers, and operating existing and new centers, for multidisciplinary health planning development and assistance. To the extent practicable, the Secretary shall provide assistance under this section so that at least five such centers will be in operation by June 30, 1976.

[(b)(1) No grant or contract may be made under this section for planning or developing a center unless the Secretary determines that when it is operational it will meet the requirements listed in paragraph (2) and it will be able to provide assistance and dissemination of information to health systems agencies and State Agencies as provided in subsections (a) and (c), and no grant or contract may be made under this section for operation of a center unless the center meets such requirements and is able to provide such assistance and dissemination of information.

[(2) The requirements referred to in paragraph (1) are as follows:

[(A) There shall be a full-time director of the center who possesses a demonstrated capacity for substantial accomplishment and leadership in the field of health planning and resources development, and there shall be such additional professional staff as may be appropriate.

[(B) The staff of the center shall represent a diversity of relevant disciplines.

[(C) Such additional requirements as the Secretary may by regulation prescribe.

[(c) Centers assisted under this section (1) may enter into arrangements with health systems agencies and State Agencies for the provision of such services as may be appropriate and necessary in assisting the agencies and State Agencies in performing their functions under section 1513 or 1523, respectively, and (2) shall de-

velop and use methods (satisfactory to the Secretary) to disseminate to such agencies and State Agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies and State Agencies), policies, and standards.

[(d) For the purpose of making payments pursuant to grants and contracts under subsection (a) there are authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1975, \$8,000,000 for the fiscal year ending June 30, 1976, \$10,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, \$6,000,000 for the fiscal year ending September 30, 1980, and \$8,000,000 for the fiscal year ending September 30, 1981.

[REVIEW BY THE SECRETARY

[SEC. 1535. (a) The Secretary shall review and approve or disapprove the annual budget of each designated health systems agency and State Agency. In making such review and approval or disapproval the Secretary shall consider the comments of Statewide Health Coordinating Councils submitted under section 1524(c)(3). Information submitted to the Secretary by a health systems agency or a State Agency in connection with the Secretary's review under this subsection shall be made available by the Secretary, upon request, to the appropriate committees (and their subcommittees) of the Congress.

[(b) The Secretary shall prescribe performance standards covering the structure, operation, and performance of the functions of each designated health systems agency and State Agency, and he shall establish a reporting system based on the performance standards that allows for continuous review of the structure, operation, and performance of the functions of such agencies.

[(c) The Secretary shall review in detail at least every three years the structure, operation, and performance of the functions of each designated health systems agency to determine—

[(1) the adequacy of the HSP of the agency for meeting the needs of the residents of the area for a healthful environment and for accessible, acceptable and continuous quality health care at reasonable costs, and the effectiveness of the AIP in achieving the system described in the HSP;

[(2) if the structure, operation, and performance of the functions of the agency meet the requirements of sections 1512(b) and 1513;

[(3) the extent to which the agency's governing body (and executive committee (if any)) represents the residents of the health service area for which they agency is designated;

[(4) the professional credentials and competence of the staff of the agency;

[(5) the appropriateness of the data assembled pursuant to section 1513(b)(1) and the quality of the analyses of such data;

[(6) the extent to which technical and financial assistance from the agency have been utilized in an effective manner to achieve goals and objectives of the HSP and the AIP; and

[(7) the extent to which it may be demonstrated that—

[(A) the health of the residents in the agency's health service area has been improved;

[(B) the accessibility, acceptability, continuity, and quality of health care in such area has been improved; and

[(C) increases in costs of the provision of health care have been restrained.

[(d) The Secretary shall review in detail at least every three years the structure, operation, and performance of the functions of each designated State Agency to determine—

[(1) the adequacy of the State health plan of the Statewide Health Coordinating Council prepared under section 1524(c)(2) in meeting the needs of the residents of the State for a healthful environment and for accessible, acceptable, and continuous quality health care at reasonable cost;

[(2) if the structure, operation, and performance of the functions of the State Agency meet the requirements of sections 1522 and 1523;

[(3) the extent to which the Statewide Health Coordinating Council has a membership meeting, and has performed in a manner consistent with, the requirements of section 1524;

[(4) the professional credentials and competence of the staff of the State Agency;

[(5) the extent to which financial assistance provided under title XVI by the State Agency has been used in an effective manner to achieve the State's health plan under section 1524(c)(2); and

[(6) the extent to which it may be demonstrated that—

[(A) the health of the residents of the State has been improved;

[(B) the accessibility, acceptability, continuity, and quality of health care in the State has been improved; and

[(C) increases in costs of the provision of health care have been restrained.

SPECIAL PROVISIONS FOR CERTAIN STATES AND TERRITORIES

[SEC. 1536. (a) Upon application of the chief executive officer of a State or the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, or American Samoa, it shall, upon approval of the application, be considered to be a State for purposes of this title and—

[(1) no health service area shall be established within it,

[(2) no health systems agency shall be designated for it,

[(3) the State Agency designated for it under section 1521 may, in addition to the functions prescribed by section 1523, perform the functions prescribed by section 1513 and shall be eligible to receive grants authorized by section 1640, and

[(4) the chief executive officer shall appoint the Statewide Health Coordinating Council prescribed by section 1524 in accordance with regulations of the Secretary.

An application made under this section for a fiscal year shall be made not later than November 1 in that fiscal year and shall contain the certification of the chief executive officer that the State is

willing and able to meet the purposes of this title in such fiscal year without any health systems agency in the State.

[(b)(1) Upon application of a State which has had an application approved under subsection (a), the Secretary shall reestablish in accordance with paragraph (2) the health service areas within the State and designate health systems agencies for such areas in accordance with section 1515.

[(2) The health service areas in a State making such an application which were in existence on the date the application under subsection (a) was approved shall be reestablished by order of the Secretary, except that if the application under this subsection requests the Secretary to designate different health service areas, the Secretary shall designate, in accordance with section 1511, different health service areas for the State.

[AUTHORIZATIONS

[SEC. 1537. The following amounts are authorized to be appropriated:

[(1) For grants and contracts under section 1516(a), there are authorized to be appropriated \$42,000,000 for fiscal year 1986.

[(2) For grants and contracts under section 1525(a), there are authorized to be appropriated \$21,400,000 for fiscal year 1986.

[(3) For grants and contracts under section 1534(a), there are authorized to be appropriated \$1,500,000 for fiscal year 1986.]

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SECTION 935 OF PUBLIC LAW 97-35

AN ACT To provide for reconciliation pursuant to section 301 of the first concurrent resolution on the budget for the fiscal year 1982

SHORT TITLE

SECTION 1. This Act may be cited as the "Omnibus Budget Reconciliation Act of 1981".

* * * * *

STATES WITHOUT HEALTH SYSTEMS AGENCIES

SEC. 935. (a)(1) Section 1536 of the Public Health Service Act (42 U.S.C. 300n-5) is amended—

(1) by striking out subsection (a),

(2) by amending the matter in subsection (b) preceding paragraph (1) to read as follows: "Upon application of the chief executive officer of a State or the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, or American Samoa, it shall, upon approval of the application, be considered to be a State for purposes of this title and",

(3) by striking out "sections 1516 and 1640" and inserting in lieu thereof "section 1640", and

(4) by adding after and below paragraph (4) the following:
 “An application made under this section for a fiscal year shall be made not later than November 1 in that fiscal year and shall contain the certification of the chief executive officer that the State is willing and able to meet the purposes of this title in such fiscal year without any health systems agency in the State.”.

(b) A State which—

(1) because of section 1536(b) of the Public Health Service Act (as in effect on September 30, 1981) received a grant under section 1516 of such Act for fiscal year 1981, and

(2) had an application under section 1536 of such Act (as amended by subsection (a)) approved,
 shall be eligible to receive a grant under section 1516 of such Act [for fiscal year 1982.].

(c) If a State which on the date of the enactment of this Act has a population of less than 600,000 and has only one health service area has an application approved under this section, such State shall be eligible to receive a grant under section 1516 of the Public Health Service Act for fiscal year 1982.

(d) The last sentence of section 1512(b)(5) of the Public Health Service Act (42 U.S.C. 3001-1(b)(5)) is amended by inserting before the period the following: “or health insurance”.

ADDITIONAL VIEWS OF CONGRESSMAN DOUG WALGREN TO H.R. 2934, HEALTH PLANNING AMENDMENTS OF 1985

In adopting the Madigan amendment that would repeal the federal health planning law, the House Energy and Commerce Committee would shortsightedly end a process of demonstrated usefulness. In my view, health planning may be needed more today than ever and, at the very least, should not be scrapped without a replacement that will effectively focus on preventing duplication of medical facilities.

COMPETITION CANNOT REPLACE PLANNING

I confess to being mystified by the logic of the forces that have combined to vote down health planning. Admittedly, the government is turning to far more strict (some would say "high-handed") mandates of medical cost control based on prospective payments for individuals served. But in our rush away from health planning, we should stop to remember that these new efforts to contain costs work at cross purposes to the savings that can be secured by preventing duplication of facilities. Prospective payments based on cost provide no incentive to prevent multiplication of facilities beyond a community's needs.

Health planning has been seen as inconsistent with "competition" as a way to hold down costs and I suspect this trend may be more responsible for the lack of support for health planning than any other factor. The reality is that health care is dominated by unavoidable factors that are contrary to the notion of competition. The sick want to turn to a familiar, trusted providers and say "help me." Community identification and professional reputation control—not comparative economics. The sick do not "comparison shop" for bargains. While no one should say "never" to any constructive proposals (perhaps some specific competitive projects could be fostered), "competition" has a long way to go in health care before we should eliminate helpful processes like health planning.

With cost containment and deficit reduction drives at "full throttle," with the imposition of prospective payment in Medicare and in many Medicaid and private programs, with the increasing trend toward mergers and corporate "marketing" of health care and especially with the growing use of "high tech" medicine, it is even more compelling to have in place a community-wide planning system.

COORDINATION RESULTS IN COST SAVINGS

Health planning is a mechanism for coordinating facilities, which in turn holds down costs. Health care is expensive. We now spend 10 percent of our national wealth on health care, \$1 billion a

day. No one can deny the logic that without coordination of facilities, competing medical providers will naturally build more health facilities than can be used if each are to provide comprehensive services. With medical technology exploding in complexity, there are substantial savings that can only be reached through community-wide planning.

The evidence is that, without restrictions, hospitals add beds, purchase complex equipment, and provide service capacity—all of which are underused. In the two states which have totally deregulated capital expenditure reviews, there have been documented large increases in new hospitals and hospital beds despite existing capacity. Studies estimate the every \$1 spent on health planning has prevented \$8 of duplicated investment in medical facilities. It should come as no surprise to us that it is health planning that is the good investment.

PLANNING ENHANCES ACCESS

Another reason to support health planning is to try to distribute resources so that everyone will have access to quality health care. We are far from that goal. Urban hospitals serving large numbers of indigent patients are struggling for survival. Teaching hospitals are searching for ways to compete under DRGs. Twelve percent of the population has no health insurance. Some rural areas do not have doctors, dentists or health clinics. The average nursing home patient today receives only 12 minutes of nursing care per day.

With the aging of the population, even more gaps will emerge. We will need 1.2 million more nursing home beds by 2000. The White House Conference on Aging predicted, over the next 14 years, a shortfall of 75,000 long-term care nurses; 20,000 geriatric nurse practitioners; and 250,000 RNs. Our need for community health nurses to provide home health care for the elderly will double in the next four years.

Health planning provides a framework for an overall evaluation of available services on a community-wide basis, identifying gaps and preventing an over concentration of effort. Admittedly, a "free-market" approach is also a way to fill in gaps, but the market approach distorts available services by "over-emphasizing" the more profitable and "de-emphasizing" the less profitable services. There are critical gaps, such as long-term care, that will never be filled by free-market forces and we would be naive to expect these needs to be met without overall planning efforts.

PLANNING INVOLVES THE COMMUNITY, ENHANCES CONFIDENCE

Finally, health planning is the only element of the health care system based on a cross-section of those who have a stake in health care—providers, consumers, government, the business community. Acting alone, physicians, patients or corporate planners do not take a community-wide perspective. Absentee corporate managers do not worry about community considerations; but the "soft" line they write off on their balance sheet while meeting in a board room in a distant city may represent critical community needs. We all pay a high price for medical care. It is essential that our medical system maintain public confidence. If it does not, we will with-

hold necessary funds from it and many could then fail to find needed medical treatment. Involving local people in designing the system helps maintain that public confidence and needed resources.

Our health planning system has helped to foster the twin goals of cost containment and access to quality care. In my view, our stake in health planning could not be greater.

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